To: Keller, Peter[keller.peter@epa.gov]; Rao, Raj[Rao.Raj@epa.gov]
Cc: Doster, Brian[Doster.Brian@epa.gov]
From: Williams, Melina
Sent: Mon 6/5/2017 5:51:57 PM
Subject: FYI: Luminant -- revised brief
Luminant opening appellate brief .MW.AC.doc

Hi Peter and Raj,

Just as a heads up, we have a brief due in the Luminant enforcement case tomorrow. I meant to send you this version when we got it on Friday afternoon, but I forgot (my apologies!). Anyway, here's the latest version I have, which contains my comments and edits and a few responses from Apple (in a few places I think our consolidated version might change in a few places based on her response to my edits/comments).

I realize that we're not giving you much time to review, but at least wanted to let you know this was in progress before it was filed.

Thanks,

Melina

Melina Williams | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

From: Chapman, Apple
Sent: Monday, June 05, 2017 12:32 PM
To: Williams, Melina <Williams.Melina@epa.gov>
Cc: Kakade, Seema <Kakade.Seema@epa.gov>; Argentieri, Sabrina <argentieri.sabrina@epa.gov>
Subject: RE: Luminant -- revised brief

Thanks, Melina. You always have great comments! I have a couple of thoughts added to your bubble comments. I probably won't be able to review this again today, so please let me know if there is anything else you need. Phill is not going to have time to review.

Ms. Apple Chapman |Deputy Director, Air Enforcement Division | U.S. Environmental Protection Agency

1200 Pennsylvania Ave. NW, Washington DC, 20004 |202-564-5666 (office)|202-841-6076 (mobile)|

From: Williams, Melina
Sent: Monday, June 05, 2017 11:39 AM
To: Argentieri, Sabrina <argentieri.sabrina@epa.gov>; Kakade, Seema <Kakade.Seema@epa.gov>
Cc: Doster, Brian <Doster.Brian@epa.gov>; Lee, Michael <lee.michaelg@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>
Subject: RE: Luminant -- revised brief

Hi Sabrina and Seema,

Ex. 5 - Attorney Client

Please let me know if you'd like to discuss anything here. I haven't yet heard from anyone else in OGC, but I understand that this was flagged for Justin this morning and that Brian had started looking at this, so there may be additional feedback from OGC. I'll keep you posted.

Thanks,

Melina

Melina Williams | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

From: Argentieri, Sabrina
Sent: Friday, June 02, 2017 2:09 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>
Cc: Kakade, Seema <Kakade.Seema@epa.gov>
Subject: Re: Luminant -- revised brief

Yes, the turnaround is very tight. Ok, keep me apprised of status.

From: Williams, Melina
Sent: Friday, June 2, 2017 1:46:13 PM
To: Argentieri, Sabrina; Chapman, Apple
Cc: Kakade, Seema
Subject: RE: Luminant -- revised brief

Ex. 5 - Attorney Client

Melina Williams | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

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From: Argentieri, Sabrina
Sent: Friday, June 02, 2017 1:21 PM
To: Chapman, Apple <Chapman.Apple@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Cc: Kakade, Seema <Kakade.Seema@epa.gov>
Subject: Fw: Luminant -- revised brief

Here is the redraft. I realize there isn't much time before Bob's midday Monday deadline. But please flag any significant issues earlier in the morning rather than later and any edits by 11 am. Note that I don't think there will be any significant issues that will call for extra discussion time.

From: Lundman, Robert (ENRD) <Robert.Lundman@usdoj.gov>
Sent: Friday, June 2, 2017 1:14 PM
To: Kakade, Seema; Tanimura, Erin; dan.smith2@usdoj.gov; Vanderhook-Gomez, Katherine (ENRD); Dunn, Jason (ENRD); Quinn, Elias (ENRD); Argentieri, Sabrina
Cc: Cutler-Freese, McKenna (ENRD)
Subject: Luminant -- revised brief

Hello all – thanks for your helpful comments on the initial draft. I've made the vast majority of the suggested changes, or I made some other change in response. Here's a revised version; this one will be reviewed by our front office too (I will let you know if we get any substantive suggestions). I'm really attempting to keep this as simple and clear as possible, so please keep that in mind if you review this version. If you have any additional comments, please try to get them to me by midday Monday. It's due to the court on Tuesday. Thanks!

Bob

To: Santiago, Juan[Santiago.Juan@epa.gov]; Rao, Raj[Rao.Raj@epa.gov]; Keller, Peter[keller.peter@epa.gov]
Cc: Williams, Melina[Williams.Melina@epa.gov]
From: Doster, Brian
Sent: Thur 11/2/2017 4:39:29 PM
Subject: Filed DTE Opposition
17-170 DTE Energy Co. (Opp).pdf

Here is the final brief filed by the US in the DTE case. This incorporates virtually all of the line edits that EPA submitted, so I think it is unlikely that we will need to pursue further action on these issues immediately. Note in particular footnote 2 on page 14, which I have copied below.

Ex. 5 - Deliberative Process

# # # #

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

To: Nizich, Greg[Nizich.Greg@epa.gov]; Svendsgaard, Dave[Svendsgaard.Dave@epa.gov]; Keller, Peter[keller.peter@epa.gov]; Deroeck, Dan[Deroeck.Dan@epa.gov]; Montanez, Jessica[Montanez.Jessica@epa.gov]
From: Garwood, Ben
Sent: Tue 6/20/2017 3:26:22 PM
Subject: FW: Review and Feedback Needed -- OAQPS Petitions inventory - Edits due to Pam by noon 6/23
Revised Petition Inventory 6-20-17.docx

Hey all,

Ex. 5 - Deliberative Process

Ben

From: Rao, Raj
Sent: Tuesday, June 20, 2017 10:43 AM
To: Garwood, Ben <Garwood.Ben@epa.gov>
Subject: FW: Review and Feedback Needed -- OAQPS Petitions inventory - Edits due to Pam by noon 6/23

Ben, please check with the group and send me revised file by **cob tomorrow**

Raj Rao, P.E.
Group Leader, New Source Review Group,
Air Quality Policy Division,
Office of Air Quality Planning and Standards (MD-C504-03)
US Environmental Protection Agency
109 TW Alexander Drive
Research Triangle Park, NC 27709
919-541-5344
919-541-5509 - Fax

From: Long, Pam

Sent: Tuesday, June 20, 2017 10:32 AM
To: OAQPS AQPD GL <OAQPS_AQPD_GL@epa.gov>; Scott, Denise <Scott.Denise@epa.gov>
Cc: Mathias, Scott <Mathias.Scott@epa.gov>; Ling, Michael <Ling.Michael@epa.gov>; Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>

Ex. 5 - Deliberative Process

To: Keller, Peter[keller.peter@epa.gov]; Kornylak, Vera S.[Kornylak.Vera@epa.gov]
Cc: Mataway-Novak, Dylan[Mataway-Novak.Dylan@epa.gov]; Santiago, Juan[Santiago.Juan@epa.gov]
From: Long, Pam
Sent: Tue 10/31/2017 2:44:04 PM
Subject: FW: Signed Title V petition response- Big River Steel
River Steel Title V Petition Response 10-31-2017.pdf
BRS Order draft 10-30-17 clean.docx

Also attaching the word file.

From: Iglesias, Amber
Sent: Tuesday, October 31, 2017 10:35 AM
To: Long, Pam <Long.Pam@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; Rush, Alan <Rush.Alan@epa.gov>
Subject: FW: Signed Title V petition response- Big River Steel

FYI

From: Cyran, Carissa
Sent: Tuesday, October 31, 2017 10:31 AM
To: Koerber, Mike <Koerber.Mike@epa.gov>; Henigin, Mary <Henigin.Mary@epa.gov>; Rush, Alan <Rush.Alan@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>; Lee, Michael <lee.michaelg@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Kataoka, Mark <Kataoka.Mark@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>
Subject: Signed Title V petition response- Big River Steel

To: Keller, Peter[keller.peter@epa.gov]
From: Montanez, Jessica
Sent: Tue 5/9/2017 2:09:12 PM
Subject: FW: Department of Commerce FR Notice - Draft Comment Summary
AirPermittingCommentsSummaryfrom_DOC-FRNotice_05022017.docx
DOC RFI Overview.docx

Jessica Montañez
Office of Air Quality Planning and Standards
Air Quality Policy Division
New Source Review Group
109 TW Alexander Drive MD: C504-03 RTP, NC 27711
Phone: 919-541-3407, Fax: 919-541-5509
Note: Positions or views expressed here do not represent official EPA policy.

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From: Kordzi, Stephanie
Sent: Thursday, May 04, 2017 9:37 AM
To: Ackerman, Charmagne <Ackerman.Charmagne@epa.gov>; Adams, Yolanda <Adams.Yolanda@epa.gov>; Akers, Brad <Akers.Brad@epa.gov>; Angelbeck, Richard <angelbeck.richard@epa.gov>; Aquitania, Manny <Aquitania.Manny@epa.gov>; Argentieri, Sabrina <argentieri.sabrina@epa.gov>; Averback, Jonathan <Averback.Jonathan@epa.gov>; Baker, Sarah <baker.sarah@epa.gov>; Barrett, Richard <barrett.richard@epa.gov>; Barton, Kasey <Barton.Kasey@epa.gov>; BECKHAM, LISA <BECKHAM.LISA@EPA.GOV>; Bellizzi, Carol <Bellizzi.Carol@epa.gov>; Benjamin, Lynorae <benjamin.lynorae@epa.gov>; Bertram, Gary <Bertram.Gary@epa.gov>; Bird, Patrick <Bird.Patrick@epa.gov>; Blathras, Constantine <blathras.constantine@epa.gov>; Boehmcke, Daniel <Boehmcke.Daniel@epa.gov>; Bradley, Twunjala <Bradley.Twunjala@epa.gov>; Braganza, Bonnie <Braganza.Bonnie@epa.gov>; Branning, Amy <Branning.Amy@epa.gov>; Bray, Dave <Bray.Dave@epa.gov>; Bridgers, George <Bridgers.George@epa.gov>; Buckler, Charles <Buckler.Charles@epa.gov>; Buenning, Hans <Buenning.Hans@epa.gov>; Burger, Riley <burger.riley@epa.gov>; Burns, Ward <Burns.Ward@epa.gov>; Campbell, Dave <campbell.dave@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Castro, Grecia <Castro.Grecia@epa.gov>; Ceron, Heather <Ceron.Heather@epa.gov>; Chan, Suilin <Chan.Suilin@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>; Chatfield, Ethan <chatfield.ethan@epa.gov>; Cheever, Robert <cheever.robert@epa.gov>; Chen, Alexander <Chen.Alex@epa.gov>; Chen, Eugene <Chen.Eugene@epa.gov>; Christenson, Kara <Christenson.Kara@epa.gov>; Clark, Adam <Clark.Adam@epa.gov>; Colecchia, Annamaria <Colecchia.Annamaria@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Crum, Lynda

<Crum.Lynda@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Cunningham, Roylene <Cunningham.Roylene@epa.gov>; Dahl, Donald <dahl.donald@epa.gov>; Dain, Gregory <Dain.Greg@epa.gov>; Damico, Genevieve <damico.genevieve@epa.gov>; Danesh, Paymon <Danesh.Paymon@epa.gov>; Darrow, Jennifer <darrow.jennifer@epa.gov>; Daugavietis, Andre <daugavietis.andre@epa.gov>; Deroeck, Dan <Deroeck.Dan@epa.gov>; Dholakia, Umesh <Dholakia.Umesh@epa.gov>; Diaz, Stephanie <diaz.stephanie@epa.gov>; Diaz-Galarza, Gloria <diaz-galarza.gloria@epa.gov>; Dossett, Donald <Dossett.Donald@epa.gov>; Doster, Brian <Doster.Brian@epa.gov>; Dressler, Jason <Dressler.Jason@epa.gov>; Dugan, Brett <Dugan.Brett@epa.gov>; duke, gerallyn <duke.gerallyn@epa.gov>; Duraski, Robert <Duraski.Robert@epa.gov>; Dykes, Teresa <Dykes.Teresa@epa.gov>; Fallon, Gail <fallon.gail@epa.gov>; Febres, Andres <febres-martinez.andres@epa.gov>; Foley, Patrick <Foley.Patrick@epa.gov>; Fortin, Kelly <Fortin.Kelly@epa.gov>; Garwood, Ben <Garwood.Ben@epa.gov>; Gilbert, Alexas <Gilbert.Alexas@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Gordon, Michael <Gordon.Mike@epa.gov>; Greaves, Natasha <Greaves.Natasha@epa.gov>; Gross, Louise C <gross.louise@epa.gov>; Hall, Kristin <Hall.Kristin@epa.gov>; Hardesty, Doug <Hardesty.Doug@epa.gov>; Harvey, Lornette <Harvey.Lornette@epa.gov>; Hazziez, Natasha <Hazziez.Natasha@epa.gov>; Hedgpeth, Zach <Hedgpeth.Zach@epa.gov>; Herring, Jeff <Herring.Jeff@epa.gov>; HertzWu, Sara <HertzWu.Sara@epa.gov>; Hofmeister, Art <Hofmeister.Art@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Holtrop, Bryan <Holtrop.Bryan@epa.gov>; Hong, Jeanhee <Hong.Jeanhee@epa.gov>; Huey, Joel <Huey.Joel@epa.gov>; Hughes, Rosalyn <Hughes.Rosalyn@epa.gov>; Igoe, Sheila <Igoe.Sheila@epa.gov>; Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>; Johansen, Amy <Johansen.Amy@epa.gov>; Johnson, Keith <Johnston.keith@epa.gov>; Johnson, Terry <Johnson.Terry@epa.gov>; Jon, Frank <Jon.Frank@epa.gov>; Kakade, Seema <Kakade.Seema@epa.gov>; Kanniganti, Radhica <kanniganti.radhica@epa.gov>; Kataoka, Mark <Kataoka.Mark@epa.gov>; Keenan, John <keenan.john@epa.gov>; Keller, Peter <keller.peter@epa.gov>; Kelly, Shaheerah <Kelly.Shaheerah@epa.gov>; Kenknight, Jeff <Kenknight.Jeff@epa.gov>; Kloeckner, Jane <Kloeckner.Jane@epa.gov>; Knodel, Jon <Knodel.Jon@epa.gov>; Kordzi, Stephanie <Kordzi.Stephanie@epa.gov>; Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Kraj, Susan <kraj.susan@epa.gov>; Krallman, John <krallman.john@epa.gov>; Krivo, Stan <Krivo.Stanley@epa.gov>; Kurlansky, Ellen <Kurlansky.Ellen@epa.gov>; Lakeman, Sean <Lakeman.Sean@epa.gov>; Land, Eva <Land.Eva@epa.gov>; Langman, Michael <langman.michael@epa.gov>; Laumann, Sara <Laumann.Sara@epa.gov>; Law, Donald <Law.Donald@epa.gov>; LeDoux, Erica <LeDoux.Erica@epa.gov>; Lee, Anita <Lee.Anita@epa.gov>; Lee, Michael <lee.michaelg@epa.gov>; Leone, Kevin <Leone.Kevin@epa.gov>; Lieben, Ivan <Lieben.Ivan@epa.gov>; Linn, Emily <linn.emily@epa.gov>; Lloyd, David <Lloyd.David@epa.gov>; Lorang, Phil <Lorang.Phil@epa.gov>; Lusky, Katy <Lusky.Kathleen@epa.gov>; MacKenzie, Lionel <MacKenzie.Lionel@epa.gov>; Magee, Melanie <Magee.Melanie@epa.gov>; Maier, Brent <Maier.Brent@epa.gov>; Mangino, Joseph <Mangino.Joseph@epa.gov>; Marcus, Danny <marcus.danny@epa.gov>; Mastro, Donna <Mastro.Donna@epa.gov>; Mataway-Novak, Dylan <Mataway-Novak.Dylan@epa.gov>; Matthews, Julie <Matthews.Juliane@epa.gov>; McAlpine, Jay <McAlpine.Jay@epa.gov>; McAuliffe, Mary <mcauliffe.mary@epa.gov>; McCahill, Brendan <Mccahill.Brendan@epa.gov>; McCullough, Hugh <McCullough.Hugh@epa.gov>; McDonald,

Janet <McDonald.Janet@epa.gov>; McDonnell, Ida <McDonnell.Ida@epa.gov>; McHale, Mary <McHale.Mary@epa.gov>; Meeks, Jeremy <meeks.jeremy@epa.gov>; Meyer, Dan <Meyer.Dan@epa.gov>; Meyer, Jonathan <Meyer.Jonathan@epa.gov>; Miller, Linda <miller.linda@epa.gov>; Mohr, Ashley <Mohr.Ashley@epa.gov>; Montanez, Jessica <Montanez.Jessica@epa.gov>; Morgan, Andrea <Morgan.Andrea@epa.gov>; Moskal, John <Moskal.John@epa.gov>; Murray, Julie <Murray.Julie@epa.gov>; Nagler, Lewis <Nagler.Lewis@epa.gov>; Narvaez, Madonna <Narvaez.Madonna@epa.gov>; Nguyen, Thien Khoi <nguyen.thien@epa.gov>; Nizich, Greg <Nizich.Greg@epa.gov>; North, Alexis <North.Alexis@epa.gov>; Odendahl, Steve <Odendahl.Steve@epa.gov>; Ogulei, David <Ogulei.David@epa.gov>; Okubo, Noreen <Okubo.Noreen@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Opila, MaryCate <Opila.MaryCate@epa.gov>; Oquendo, Ana <Oquendo.Ana@epa.gov>; Ortega, Kellie <Ortega.Kellie@epa.gov>; Owens, Katharine <Owens.Katharine@epa.gov>; Palmer, Karen <Palmer.Karen@epa.gov>; Parrish, Robert <Parrish.Robert@epa.gov>; Peachey, Robert <peachey.robert@epa.gov>; Pepple, Karl <Pepple.Karl@epa.gov>; Perez, Idalia <Perez.Idalia@epa.gov>; Peter, David <peter.david@epa.gov>; Petriman, Viorica <Petriman.Viorica@epa.gov>; Portanova, Sam <portanova.sam@epa.gov>; Porter, Andrew <Porter.Andrew@epa.gov>; Purvis, James <Purvis.James@epa.gov>; Queiroz, Gustavo <queiroz.gustavo@epa.gov>; Rao, Raj <Rao.Raj@epa.gov>; Rineheart, Rachel <Rineheart.Rachel@epa.gov>; Rios, Gerardo <Rios.Gerardo@epa.gov>; Robinson, Jeffrey <Robinson.Jeffrey@epa.gov>; Robinson-Austin, Michelle <robinson-austin.michelle@epa.gov>; Root, Kathleen <Root.Kathleen@epa.gov>; Rouch, Ellen <Rouch.Ellen@epa.gov>; Ruddick, Randall <ruddick.randall@epa.gov>; Ruvo, Richard <Ruvo.Richard@epa.gov>; Sareen, Neha <sareen.neha@epa.gov>; Schoellkopf, Lynde <Schoellkopf.Lynde@epa.gov>; Schulingkamp, Joseph <Schulingkamp.Joseph@epa.gov>; Schwartz, Colin <Schwartz.Colin@epa.gov>; Scott, Patricia A. <Scott.PatriciaA@epa.gov>; Senghani, Dinesh <senghani.dinesh@epa.gov>; Shaltanis, Jennifer <Shaltanis.Jennifer@epa.gov>; Shepherd, Lorinda <Shepherd.Lorinda@epa.gov>; Siegel, Joseph <Siegel.Joseph@epa.gov>; Siffring, Stuart <Siffring.Stuart@epa.gov>; Sims, Mark <Sims.Mark@epa.gov>; Skelley, Dana <Skelley.Dana@epa.gov>; Smith, Claudia <Smith.Claudia@epa.gov>; Smith, Mark A. <Smith.Marka@epa.gov>; Smith, Noah <SMITH.NOAH@EPA.GOV>; Snyder, Erik <snyder.erik@epa.gov>; Solomon, David <Solomon.David@epa.gov>; Spangler, Matthew <Spangler.Matthew@epa.gov>; Spiegelman, Nina <Spiegelman.Nina@epa.gov>; Stewart, Kathleen <Stewart.Kathleen@epa.gov>; Stone, William <stone.william@epa.gov>; Sutin, Elyana <Sutin.Elyana@epa.gov>; Suzuki, Debra <Suzuki.Debra@epa.gov>; Svendsgaard, Dave <Svendsgaard.Dave@epa.gov>; Talley, David <Talley.David@epa.gov>; Tennenbaum, Susan <Tennenbaum.Susan@epa.gov>; Terriquez, Joe <terriquez.joe@epa.gov>; Terry, Randy <Terry.Randy@epa.gov>; Terry, Sara <Terry.Sara@epa.gov>; Thomas, Carrie <Thomas.Carrie@epa.gov>; Todd, Robert <Todd.Robert@epa.gov>; Tomasovic, Brian <Tomasovic.Brian@epa.gov>; Triplett, Eric <Triplett.Eric@epa.gov>; TSAI, YA-TING <Tsai.Ya-Ting@epa.gov>; Valenziano, Beth <valenziano.beth@epa.gov>; Vergeront, Julie <Vergeront.Julie@epa.gov>; Versace, Paul <Versace.Paul@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; Vyas, Himanshu <vyas.himanshu@epa.gov>; Wagner, William <wagner.william@epa.gov>; Walters, Julie <Walters.Julie@epa.gov>; WARD, LA WEEDA <WARD.LAWEEDA@EPA.GOV>; Watson, Lucinda <Watson.Lucinda@epa.gov>; Wauters, Patrick <wauters.patrick@epa.gov>; Webber, Robert <Webber.Robert@epa.gov>; Weiler,

Eaton <weiler.eaton@epa.gov>; wentworth, paul <wentworth.paul@epa.gov>; Wheeler, Carrie <Wheeler.Carrie@epa.gov>; Wiley, Adina <Wiley.Adina@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>; Williamson, Timothy <Williamson.Tim@epa.gov>; Wilson, Holly <Wilson.Holly@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Wortman, Eric <Wortman.Eric@epa.gov>; Yannayon, Laura <Yannayon.Laura@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Zuniga, Mario <zuniga.mario@epa.gov>
Subject: Department of Commerce FR Notice - Draft Comment Summary

All,

Please see Jessica's note below regarding this e-mail. We discussed this on yesterday's NSR/Title V conference call.

Stephanie Kordzi

From: Montanez, Jessica
Sent: Wednesday, May 03, 2017 2:02 PM
To: Kordzi, Stephanie <Kordzi.Stephanie@epa.gov>
Subject: Department of Commerce FR Notice - Draft Comment Summary

Stephanie,

As promised in today's call, here is the draft summary of the comments received in regards to the "Impacts of Federal Regulations on Domestic Manufacturing" Department of Commerce Federal Register Notice.

We ask that this document is not cited, copied or shared outside the Agency.

Thanks,

Jessica

Jessica Montañez
Office of Air Quality Planning and Standards
Air Quality Policy Division
New Source Review Group
109 TW Alexander Drive MD: C504-03 RTP, NC 27711
Phone: 919-541-3407, Fax: 919-541-5509
Note: Positions or views expressed here do not represent official EPA policy.

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Air Permitting Comments Summary from Federal Register Notice: "Impact of Federal Regulations on Domestic Manufacturing" – 82 FR 12786

https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=DOC-2017-0001

New Source Review Permitting

Topic	Commenter(s)	Comment
General Permitting Process – 54 commenters	PA Chamber of Business and Industry (10), Mount Vernon Mills (12), Chromaflo (14), Shawn Somerday (21), Manitowoc Cranes (40), Becton, Dickinson and Company (41), Novelis (42), Mosaic Fertilizer (43), American Composites Manuf. Association (53), Treated Wood Council (55), Composite Panel Association (56), Stupp Coatings (58), Tramontina USA (61), Eastman Chemical Company (62), The Fertilizer Institute (64), Domtar (69), Beet Sugar Development Foundation (73), Southern Lumber Manufacturers Association (75), Boeing Company (76), Northrop Grumman Corporation (79), Ameren (84), National Oilseed Processors Association (85), Industrial Energy Consumers of America (89), Flexible Packaging Association (90),	1. Reform permitting (10, 53, 62, 64, 89, 110, 111, 146). E.g., encourage "performance-based approaches" that rewards states and industry for attaining air quality goals (10), Compare the ease of use & degree of public health protection from CAA permitting programs across industrialized states and use it to facilitate reform of all programs (53). Explore commonsense reforms to NSR that reflect the current state of technology and increasingly narrow opportunities for further improvements (146). Create a multi-constituency commission tasked with identifying the needed changes that may be made to the federal clean air permitting process in the next 12 months (64). 2. Ensure timely permitting (12, 14, 21, 40, 61, 76, 84, 89, 90, 106, 108, 159), establish reasonable deadlines for EPA review of permitting (10) for regional offices and delegated agencies (76); streamline application process (61), simplify technical reviews (61); do not extend the 1-year completeness determination deadline to delay permitting (84, 90, 150), provide clearer guidelines (89). Use lean implementation to meet goals and reduce process from 18 months to less than a year, perhaps 6 months (76). Establish a one-year schedule for lean implementation (76). Use checklists & incentives with EPA & permit authorities to shorten time for permit review & issuance (90). Streamline process to start construction less than 2 yrs after application submittal (159). 3. Establish and adhere to permitting timelines (76, 84, 96, 112). E.g. 60-day period for federal interagency and state-federal review, 60 days for EPA approval where needed (76). 4. Provide certainty for final permitting actions (10, 126) including permit issuance date (126, 167). 5. Allow for expedited permit reviews for a fee (159). 6. Evaluate the litigation that has occurred and provide better, more precise definitions for "emission unit," "source," "modification," "major modification," "projected emission increase," and "continuous." Key terms such as "routine projects," "efficiency projects," "aggregation," "debottlenecking" and the formulas for determining emissions increases should be defined by Congress (84). Provide exhibit with suggested statutory changes (84). 7. Revise the definition of "commence construction" (146) to allow construction activities that do not generate emissions (e.g. civil works like piling & foundations to support the equip.) to take place before an air permit is in hand (146). Allow manufacturer to begin construction at its own risk so long as the new process equipment is not operated after submitting complete permit application (89) or prior to receiving the permit approval (53, 90). E.g., Indiana's fast track permitting process allows for construction to begin in 21 days with initial public notice and then subsequent notice while the company begins construction at its own risk (150). 8. Redefine "begin actual construction" definition (101, 125, 126, 161). For example, "Begin actual construction" has, by policy, been extended to prohibit construction on "any installation necessary to accommodate the emissions unit" (126). Sources should be able to conduct early work up until the piece of equipment is actually

	American Iron and Steel Institute (92), National Mining Association (96), The Aluminum Association (101), American Foundry Society (106), Valero (109), Freeport-McMoran (110), Steel Manufacturing Association & Specialty Steel Industry of North America (112), Associated General Contractors for America (114), Associated General Contractors of America (119), Halogenated Solvents Industry Alliance (121), 3M (123), BP America (125), American Petroleum Institute (126), Portland Cement Association (127), Theresa Pugh Consulting, LLC (128), National Marine Manufacturers Association (131), National Roofing Contractors Association (132), The Plastics Industry Association (133), American Fuel & Petroleum Manufacturers (136), Motor and Equipment Manufacturers Association (137), SSAB Enterprises (140), Council of Industrial Boilers	emitting. This includes laying underground piping, excavating, bringing in fill to prepare the area where the emission unit(s) will sit, and other efforts until the point prior to installing the emissions unit (126). 9. Clarify (128, 150) or eliminate (92) case-by-case Routine Maintenance Repair & Replacement (RMRR) policy, even if they are expected to occur only once or twice over the lifetime of a plant (150). Codify the RMRR requirements in 68 FR 61248 (Oct 27, 2003) (140, 154). Create a presumptively approvable RMRR list for the Electric Arc Furnace industry through guidance (140). 10. Streamline overall Monitoring, Recordkeeping and Reporting (MRR) requirements (42, 64, 73, 76, 133). Reduce frequency (14, 64), align the reporting frequencies and have a common set of definitions for compliance periods. In many cases, reporting should only be necessary on an annual or less frequent basis (64). Use electronic databases to track permits through the various milestones (42), use CDX (76) or other electronic reporting portal to allow manufacturers to report information needed by regulatory programs only once (53, 58, 133). Outdated references to "log books" and other outdated methods should be removed and or replaced from the regulations (147). Permits containing such reference should be modified easily using an administrative amendment (147). Require less reporting for those operations with consistent decreased emissions (133). Federal and state reporting requirements should be harmonized, EPA requires electronic reporting of facility information, whereas states require hard copy submittals (150). 11. Change Startup, Shutdown and Malfunction (SSM) provisions/interpretation (53, 101, 64). EPA has rejected State SIP rules allowing alternative permit req. for unplanned SSM situations (e.g., EPA disapproved giving the Ohio EPA director discretion to allow alt. limits, such as work practice standards, for sources with malfunctioning control devices when air quality standards would not be violated and the source owner/operator was not negligent) (53). Restore exemptions and affirmative defense provisions for emissions during SSM events (64). 12. Remove requirements for considering fugitive emissions in NSR permitting evaluations (64). 13. Public notice requirements delay permitting (109, 133). Prevent NGOs and other commenters from using the public comment period as a mechanism for securing promises and actions from regulators that are not required by law (84). Example provided (84). Reduce the amount of time spent having to respond to comments that could have been raised or were addressed in previously approved permits (e.g., op. or const. permits) (133). 14. Eliminate or reduce repetitive permit application requirements required by states (73, 85, 96, 133), between states and federal agencies (79, 90, 114, 121, 133, 158) and between federal agencies (79, 84, 137). Consolidate the review at a single level and within a single agency (79, 84, 119) with ultimate decision-making authority (84). Permits granted by one federal agency should not be revocable by another (84). Where multiple agencies must be involved, improve inter-agency coordination so that lines of responsibility are more clearly defined and duplicative data requirements are eliminated (55, 64, 79, 131, 133, 167). Where consultation between agencies is appropriate, provide firm deadlines (84). Provide example (84). Create an independent federal agency to arbitrate between state and local regulators and industry when the application of regulations is not clear (132). 15. Encourage greater consistency across regions to reduce regulatory burden, oppose regional consistency rule (76). 16. Develop efficient processes for proactive interaction and collaboration between the agency and the regulated manufacturer so that questions, concerns and misunderstandings can readily and promptly be addressed (79).

	Owners (143), National Association of Manufacturers (146), US Steel Corporation (147), Air Permitting Forum (150), Iowa Association of Business& Industry (154), Cement Kiln Recycling Coalition (158), Vinyl Institute (159), NEDA/CAP (161), American Chemistry Council (167)	Require states to adopt all federally-adopted lean processes as a condition for delegation (76). 18. Streamline data requirements to ensure that only data that is required for a permit decision is required to be submitted (79, 84, 126, 147), not to address questions or concerns like "we need this info because somebody may ask about it or it would be nice to know (147)." 19. Develop pre-approved specifications for permits to simplify and shorten the permit process and, to the maximum extent practical, allow permit applications to be completed, and application status reviewed, online (79). 20. Allow general permits for major source "modifications" or develop category-specific "modification" rules for the 28 source categories. Example given for "fossil fuel fired generation units," 40 CFR Part 60 Subpart D (84). 21. Allow permits-by-rule for major sources (58, 84, 126). May in fact force higher compliance by promoting no deviations or requested exceptions as the path of least resistance to obtaining a permit (58). 22. Use permit exemptions to allow states to focus their case-by-case permitting efforts on the types of activities with the most serious environmental impacts (84). 23. Exclude production efficiency projects from permitting (127). 24. Change focus to continuous environmental improvements based on cost/benefit analysis (73). 25. Renew activity in flexible air permitting with stakeholder engagement (123, 133, 167). Provide leadership, guidance and model permitting language for states (123). Set expectations for states to develop and issue innovative permits as quickly as traditional permits (123). 26. Continue and expand opportunities for innovative air quality permitting that include provisions for advance approval of future manufacturing projects (146). 27. Reduce federal oversight of state permitting actions (56, 58, 64, 89, 106, 125, 150, 158); States should be the primary decision maker (158), don't second guess state determinations (127, 150) especially in the absence of negligence, fraudulent behavior or inappropriate influence (89). Limit the scope of EPA oversight to only those activities specifically authorized by Congress (58). States should be evaluated on how their program is performing, not micromanaged on each and every permit decision (150). 28. Construction and operating permits overlap and should be consolidated (73, 147). States and EPA should review permits in parallel, especially for projects that require both NSR & Title V permits (41, 90). 29. Recommend looking at/implementing provisions from these permitting programs: GA and SC for expedited and reduced permitting uncertainty (75); TN for allowing title V permits to be used in lieu of construction permits and thus allowing companies to undertake certain changes at their risk once a minor modification application is submitted (62); FL for its permit review deadlines (43) under the Simplified Nimble and Accelerated Permitting (SNAP) process (79); MO for its lists of sources and emissions units that are exempt from permitting based on the types of emissions and air quality impacts associated with each category (84); IN for concurrent permit review, timely issuance of permits (147, 150) and risk assessments (158), IL for expedited permit reviews for a fee (89); TX for is permit-by-rule program (62) and tiered BACT approach (150); MI for its general permits program for small well controlled and well defined sources such as natural gas fired boilers (62); MA and WI, no specifics provided (111); LA for its expedited permitting (64, 150), Pudget Sound CAA in WA (132), no specific provided; OH for its parallel processing of permit (150); PA for its request for determination (158).

		Evaluate and rate state agencies based on their permit application process to know what states and jurisdictions are best to build new plants and facilities (132). 31. Have a single point of contact for all air permitting process (42, 79, 133). 32. Establish an office of ombudsman with the CEQ to help streamline the permitting process and coordinate across media and agencies (76). 33. Consider the positive and negative impacts as well as the deficiencies of the law that allows a State Governor to ask EPA to enter into a refinery permitting cooperative agreement for streamlining the permitting process (42 USC Sec. 15952) (136). 34. Streamline permitting by including in it NEPA equivalence streamlining (96). 35. Support states that offer a "write your own permit program." Company provides the permit application, draft permit and all supporting documentation to justify the proposed permit requirements (69). 36. Consider integrating the concept of "Design-Build Projects" into the CAA permit discussion (90). Design-build is a project delivery system used in the construction industry. It is a method to deliver a project in which the design and construction services are contracted by a single entity known as the design–build contractor. 37. Educate public on the time necessary for preparing permit applications (150). 38. Eliminate the ratchet provisions included in the rules and instead provide incentives for companies to accept a ratchet, e.g., allowing them to sell their offset credits to other companies that want to create jobs within the air shed. (150). 39. Eliminate the NSR program by controlling emissions on a cap and trade basis (143).
NSR Applicability – 19 commenters	PA Chamber of Business and Industry (10), The Fertilizer Institute (64), Beet Sugar Development Foundation (73), Flexible Packaging Association (90), American Iron & Steel Institute (92), Valero (109), Graphic Arts Coalition (111), American Petroleum Institute (126), Portland Cement Association (127), The Plastics Industry Association (133), American Fuel & Petroleum Manufacturers (136), SSAB Enterprises (140),	1. Revise the PSD applicability requirements (64). 2. Increase the permit exemption thresholds (73, 146). 3. Adjust NSR thresholds to only require permit where it can yield environmental benefit. (143); e.g., trigger NSR based on NSPS hourly emission rate increase test (143); not triggering NSR if the maximum hourly rate of a source will not change after modification (144). 4. Use actual emissions rather than future potential or future projected actuals in cases w/o "netting" (143). 5. Eliminate Actual to Potential Test (109). 6. Use a potential to potential comparison of emissions to determine whether PSD/NNSR is triggered (136). 7. Undertake an effort to modify the current PTE definition to take into account other physical limitations or reconsider how and when PTE needs to be utilized (111). 8. Revise how emissions increases (127) decreases are considered (109). 9. Eliminate the need to consider emissions increases (136, 150) and decreases (150) from non-modified affected emission units, finalize debottlenecking proposal (144, 152). 10. Make contemporaneous netting easier to perform and more consistent (133), rescind the 2011 memo that requires the actual to potential emissions test for cont. netting (143, 144, 150, 152), Switch cont. netting to actuals to avoid unnecessary NSR reviews when a project's actual emissions will decrease (126, 143, 144, 152). The rule allows in accordance with the "new level of actual emissions," 40 CFR 52.21(b)(3)(v) (126).

	Council of Industrial Boilers Owners (143), American Forest and Paper Association (144), National Association of Manufacturers (146), US Steel Corporation (147), Air Permitting Forum (150), American Wood Council (152), American Chemistry Council (167)	Credit efficiency improvements for contemporaneous netting calculations by focusing on whether the modification reduces emissions per unit of product production (150). 12. Revisit the demand growth exclusion and causation requirement to ensure that it faithfully implements the statutory requirements (150). 13. Allow project netting (126, 136, 143, 144, 147, 150, 152), finalize 2006 project netting proposal (143, 144, 152), allow project netting based on actual emissions (144, 152). Allow project netting for existing and hybrid units as well (126). 14. Base NNSR on actual emissions instead of PTE (10). 15. Provide a definition of "project" to address uncertainty around project aggregation (136). 16. Limit aggregation of projects & emissions. Codify less constraining interpretations by regulation (144, 152). Address the inappropriate aggregation of minor sources (146), reinstate 2006 aggregation policy where only economically or technically dependent plant changes could be aggregated or 2009 policy that sets a rebuttable presumption that changes more than 3 yrs. apart cannot be aggregated (146). 17. Remove the stay of the 2009 aggregation, debottlenecking and project netting final rule and move to end the reconsideration process (150, 167), rule contained many improvements for the NSR program (126, 150,167). 18. Rescind EPA's project aggregation policy (90). 19. Exclude Pollution Control Projects (PCP) from definition of modification (92, 140, 143, 144, 152) through CAA amendments (143) or legislative solution (144, 152) if necessary. Publish techs & practices that would be considered "presumptively eligible" for PCP exclusion for Electric Arc Furnaces (140).
PALs – 12 commenters	American Composites Manufacturers Association (53), Treated Wood Council (55), Domtar (69), Industrial Energy Consumers of America (89), American Iron & Steel Institute (92), Portland Cement Association (127), SSAB industries (140), Council of Industrial Boilers Owners (143), American Forest & Paper Association (144), US Steel Corporation (147), American Wood Council (152), Iowa Association of Business& Industry (154)	1. Encourage PALs (55, 92, 144, 152), more agencies should issue PALs (89). Suggest EPA allow facilities to make process changes, without the need for a PSD application, provided that the facility operates under its permit limits (55). 2. Revise PAL requirements (127, 154). Re-enact NSR Reform for PALs (154). 3. PALs have so many requirements and limitations that they are too difficult to implement and thus rejected by most permitted sources (53, 140). Work together with the steel industry to minimize the burdens of establishing PALs (140). 4. Undertake a review of the PAL provisions and eliminate those that, for little or no environmental benefit, constitute disincentives to establishing PALs (143, 147). E.g., eliminate the req. for a 10-year review that could result in a reduction in the PAL level (143, 144, 152). E.g., developing and monitoring compliance with PALs & complying with a fixed limit that locks into historic baseline actual emissions for all units restricts sources (compared to the individual existing limit for an emission source) (147). 5. Review the PAL provisions and remove these barriers: (1) Eliminate forcing a review and downward adjustment to the PAL every 10 years; (2) eliminate the ability to re-open a PAL at any time and the ability to adjust the PAL downward; (3) the ability to adjust the PAL should only occur under very limited circumstances; (4) streamline provisions for increasing a PAL by removing the unnecessary administrative burdens with providing various evaluations which are onerous, create uncertainty and provide little environmental benefit; (5) re-visit the

		provisions for terminating a PAL. Facilities should not be penalized for removing a PAL (69).
Control Technology Review (BACT/LAER) – 14 commenters	PA Chamber of Business and Industry (10), The Fertilizer Institute (64), The Aluminum Association (101), Steel Mfg. Assoc. & Specialty Steel Industry of North America (112), American Petroleum Institute (126), Theresa Pugh Consulting, LLC (128), The Plastics Industry Association (133), American Fuel Petroleum Manufacturers (136), Council of Industrial Boilers Owners (143), American Forest and Paper Association (144), US Steel Corporation (147), Air Permitting Forum (150), American Wood Council (152), Iowa Association of Business & Industry (154)	1. BACT/LAER should be based on similar, constructed facilities (10). 2. Provide certainty that projects that undergo BACT/LAER determinations based upon the emissions control techs that were available during the initial permit application would not undergo a revolving door of appeals (10). 3. Allow presumptive BACT (140, 150); establish presumptive BACT limits through a notice and comment process which could be rebutted by the permittee by proceeding with a case-by-case BACT review (150). Establish presumptive BACT for Electric Arc Furnaces (140). 4. Allow BACT in Nonattainment areas (10). 5. Encourage measures that consider and take advantage of advances in technology (133). 6. Develop region specific BACT emission rates/control factors (101). 7. Encourage efficiency improvements and modernization of existing plants, BACT determinations for existing sources are rarely economically justified (128). 8. Tailor BACT process to result in effective emissions control with less regulation & administrative processes (126, 136). For example, EPA should specify top-down BACT is only necessary in unique scenarios (126). BACT for most source types is well established and a detailed analysis is not warranted (126). States should have the authority and wide discretion in a BACT evaluation, without adverse comments from EPA when the end result is likely known at the beginning of the evaluation (126). 9. Do not include other countries unproven techs in BACT evaluations; places US at disadvantage (140, 154). 10. Clarify what constitutes "economically reasonable" for GHG BACT (143). 11. Reinforce that BACT does not require "redefining the source" for alternative energy sources (143, 144, 152). 12. Reinstate Clean Unit exemption (143, 144, 152) through CAA amendments if necessary (143), craft exemption based on actual emissions and considering DC Circuit Court of Appeals findings. Seek legislative solution if CAA solution is not possible (144, 152). 13. Exempt installation or in-kind replacement of pollution control devices (64) from BACT (147); projects are usually delayed due to disagreements on PTE or projected actual emissions when there was no emission increase (147). Put more weigh on NSPS req. rather than permitting (e.g., trigger NSPS for boilers & not permitting (64)). 14. Amend workshop manual to rectify inconsistencies in BACT cost analyses; (e.g., economic threshold for CO control should be approx. two orders of magnitude lower, $50/ton) (143). 15. Issue guidance clarifying that states with SIP approved programs have the authority to prepare and determine BACT based emission limits in accordance with their program, less federal oversight (150). 16. Review & eliminate the need to consider CCS as part of BACT determinations in general (143, 144, 152) & for refineries and petrochemical manufacturing facilities (136). 17. Standby & emergency generators that operate less than 500 hours/year should be exempt from permitting and reporting (147). 18. Burdensome for industry when EPA demands certain information (e.g., operational specifications for equipment that would not be evaluated or purchased until later stages of the project), especially when imposed by EPA's

		own internal guidance (112).
Other NSR Requirements – 20 commenters	PA Chamber of Business and Industry (10), Resources for the Future (48), Treated Wood Council (55), Industrial Energy Consumers of America (89), The Aluminum Association (101) Beet Sugar Development American Foundry Society (106), National Lime Association (108), Valero (109), Steel Manufacturing Association & Specialty Steel Industry of North America (112), Associated General Contractors of America (114), National Association of Forest Owners (116), Associated General Contractors of America (119), American Petroleum Institute (126), American Fuel & Petroleum Manufacturers (136), American Forest & Paper Association (144), National Association of Manufacturers (146), US Steel Corporation (147), Air Permitting Forum (150), American Wood Council (152), NEDA/CAP (161)	<u>PSD</u> 1. Eliminate the Tailoring Rule (109) or GHG regulation (55, 106, 112) until Congress has considered the issue and granted authority (55). 2. Confirm via rulemaking that PSD BACT is not required for biomass CO2 emissions (116, 144, 146, 152). 3. Set a GHG *deminimis* threshold to provide regulatory certainty to those businesses ultimately impacted (114). SER should be at least 75,000 tpy CO2e (119, 144, 152) and preferably 100,000 tpy CO2e (144, 152) or higher (119, 126). Set a GHG SER of at least 250,000 tpy CO2e (136). Finalize a SER much higher than 75K tpy CO2e based on the number of sources covered and the marginal effect the permitting requirements would have (150). 4. Reevaluate its presumptive GHG SER threshold and justify that the SER that is promulgated represents an accurate de minimis threshold (89). <u>NNSR</u> 5. Reform offset requirements (48, 108, 126, 144, 152, 161), expand pool of Emission Reduction Credits (ERCs) available for offsets (48, 144, 152) especially in rural areas (144, 152); current offset prices stymie growth (48). Allow alternatives such as applicants paying fees to the state regulatory agency to fund emissions reductions elsewhere in state or region (48, 108, 144, 152). Create a consistent and simple process to bank and track emission credits (147). Change NNSR requirements & practices for emission offsets, including (1) source of an offset, (2) contemporaneous period, (3) pollutant interchangeability, (4) offsets from minor and other nontraditional sources (161). 6. Amend the CAA to promote development in nonattainment areas (10). 7. Instead of requiring case-by-case modeling studies to justify the use of out-of-area offsets, EPA and states could in many cases rely on the long-range transport studies that EPA has already done to show that emissions from 28 states contribute to ozone and fine PM NA in many other states. Even where EPA has not already done such modeling, companies seeking to rely on out-of-area offsets should be able to employ similar studies to justify the use of such offsets. This reform would not address all the concerns about current offset requirements, but it would significantly expand the pool of potential offsets in many parts of the country (especially in rural areas) while still achieving the program's environmental goals (126). <u>PSD & NNSR</u> 8. Revise PM2.5 SER (101).

Modeling – 27 Commenters	PA Chamber of Business and Industry (10), Resources for the Future (48), GAF Corporation (50), American Composites Manufacturers Association (53), Composite Panel Association (56), The Fertilizer Institute (64), NAAQS Implementation Coalition (68), Beet Sugar Development Foundation (73), Southern Lumber Manufacturers Association (75), National Oilseed Processors Association (85), Industrial Energy Consumers of America (89), Flexible Packaging Association (90), American Iron and Steel Institute (92), The Aluminum Association (101), National Lime Association (108), Valero (109), Steel Mfg. Association & Specialty Steel Industry of North American (112), American Petroleum Institute (126), American Fuel & Petroleum Manufacturers (136), Council of Industrial Business Owners (143),	General 1. Replace current deterministic, upper-bound modeling with a probabilistic approach (48, 64, 75, 89, 108, 126, 144). 2. Adopt modeling protocols that reflect variability in actual emissions, meteorology and background concentrations (136, 143, 144, 150, 161). Also allow for reasonable assumptions of neighboring emissions and use of monitored data along modeling data when available (150). 3. Reform modeling so it is not based on worst-case meteorology or improbably high production & emission rates (53, 68, 73, 85, 112, 143, 144, 146, 147, 148, 161). E.g., issue guidance that provides more realistic treatment of emissions used in modeling in order to provide more accurate predictions of ambient concentrations (68, 144). The application of the EMVAP tool developed by EPRI or EPA's "Randomly Reassigned Emissions" approach could avoid the application of unnecessarily conservative emission estimates, even for sources lacking continuous emissions monitoring data (68, 144). Also, issue guidance stating that background concentrations -based on monitors near sources being modeled- may be paired in time with the meteorological conditions that produced them, and used for modeling (68, 144, 147). Alternatively, a Monte Carlo process could be used to characterize variable background (68, 144, 147). 4. Model input should use actual emissions and not allowable emissions (64, 68, 89, 90, 136, 144). The only sources for which allowable emissions might be required are sources for which there is no record of actual emissions (64, 68, 89, 144). Issue guidance to address this and the guidance will become more imperative if EPA insists that emissions from startup and shutdown activities be quantified and evaluated for short-term (i.e., 1-hour to 24-hour average) standards (144). This would lead to an overdue change to Section 8 of Appendix W (144). 5. Modernize air permitting by using more reliable tools and updated policies (56, 64, 146) E.g., there is a lack of or inappropriate use of emission measurement methods, poor estimates of emissions, use of unrealistic air dispersion models, and other rigid permitting policies) (56, 146). 6. Eliminate air dispersion modeling requirements in areas where ambient air quality monitoring data shows concentrations are well below the standards (50). 7. Modify offsite sources modeling so that permittees are not at the mercy of other industrial facilities (50). 8. Recommend that when EPA cannot identify a broadly-applicable model for use under a set of conditions (e.g., long-range transport or the impact of secondarily-formed pollutants attributable to a single source of precursor pollutants) it should allow the state (or other regulatory authority) to determine what model should be used (64, 68, 89, 144, 150, 161). Formal consultation w/Modeling Clearinghouse and documentation of that consultation whenever an alternative model is used as included in the latest update to Appendix W will encumber PSD permit applicants (68, 161). In addition, the EPA and the public can comment on concerns about model selection during the public comment period (150). 9. Adopt a moratorium on single-source precursor modeling of ≥ 3 years to further develop cost-effective models and screening techniques that do not require lengthy Model Clearinghouse approval (68, 144). If EPA does not implement a moratorium, implement measures that adequately screen lower emitting sources from excessively expensive modeling requirements (68, 144).

	American Forest & Paper Association (144), National Association of Manufacturers (146), US Steel Corporation (147), TriState Generation and Transmission Association (148), Air Permitting Forum (150), Vinyl Institute (159), NEDA/CAP (161)	Direct more funding to research on dispersion modeling of secondary pollutant formation for a single source or small group of sources at an industrial facility. Developing models to economically model single-source ozone and PM2.5 developments would substantially reduce burdens (144). 11. Develop MERPs based on a clear path for approval of the use of EPA's modeled location's MERPs for an applicant's site (68, 144). For example, although EPA provides example MERPs based on the draft SILs, EPA needs to explain exactly how background concentrations of NOx and VOCs and meteorological factors should be used to demonstrate suitability to a particular site (68, 144). EPA's draft guidance on this has the potential for inconsistency and confusion, resulting in permitting delays and uncertainty (68). EPA should establish a pre-approved platform for ozone and PM2.5 modeling that allows MERPs to be developed covering all areas of the country (68, 144). This platform could then be used for ozone and secondary PM2 5 modeling in cases when MERPs are exceeded (68, 144). The platform could be used for states to develop MERPs as well as for site-specific ozone or PM2.5 modeling, if required (68, 144). 12. Recognize intermittent sources (68, 144, 150) as a special class in terms of their impact on short-term standards (68). Exclude intermittent sources from modeling against the 1-hour SO_2 and NO_2 NAAQS (144) and extend it to PM2.5 (144). Also, sources that operate 500 hours/year or less should be exempt from air modeling (68). Alternatively, sources that operate less than 1% of the time should be exempt from modeling SO_2 and sources which operate less than 2% of the time should be exempt from modeling NO_2 or PM2.5 (note that EPA's March 1, 2011 guidance provides the rationale for the 1 and 2%) (68, 144). 13. Eliminate the requirement to model fugitive emissions, particularly because the impact of fugitive emissions is highly localized, and neither EPA nor states has good methods for measuring or even estimating fugitives (161). 14. Discount international emissions from background when performing modeling analyses. For example, where meteorological conditions play a pronounced role in transporting extra-jurisdictional emissions, those emissions should be excluded from regulatory consideration as exceptional events (144). Also, EPA should not constraint CAA 179B international transport provisions to border regions (144). 15. Modeling should not be required for minor or insignificant emission sources (73). 16. Evaluate if the modeling guidelines and platforms need to be updated at a minimum once every 3 years. EPA should allow "BETA" fixes to become default tools when peer-reviewed research indicates that such fixes are better than existing models (144). 17. Develop streamlined modeling reports (73). 18. Minimize reliance on photochemical modeling (92, 112). 19. Modify modeling requirements to reduce permitting delays (109). Modeling Parameters 20. Dedicate funding for new data sets and a reevaluation of AERMOD performance in light of recent modifications, as well as for its performance of 1-hour concentrations (68, 144). 21. Recent updates to AERMOD & AERMET reflect improvements in models and assumptions that minimize over prediction of impacts, more revisions are necessary (148).

		Correct AERMOD's low-wind speed over-prediction (68, 147). Promptly make LOWWIND3 an approved Guideline option for AERMOD through the Model Clearinghouse and work to specify through an Appendix W rulemaking when its use would be appropriate (68, 144). The EPA should also reconsider the proposed version of ADJ_U* as a regulatory-default to further address low-wind speed over prediction (68). 23. Incorporate the NO to NO2 conversion limitation for short travel times into AERMOD as soon as practicable (144). 24. Approve the use of the proposed NO2 Tier 2 Ambient Ratio Method (ARM2) as a screening method to model NO2 not the modified version of ARM2 adopted in the latest revisions to Appendix W (68). 25. Allow for the use of LIFTOFF as a source character adjustment to account for the plume liftoff effects associated with waste heat releases in highly industrialized areas (68). 26. Authorize the use of source characterization techniques such as AERMOIST, AERLIFT, urban characterization, pre-processing step for fugitive PM, etc. (68,147) without the need for a non-guideline model approval by a permitting authority (68). 27. Allow for the use of a pre-processing step to account for the overestimate of fugitive emissions in AERMOD (68). AERMOD significantly overstates the modeled impacts of fugitive PM emissions from sources such as roadways, materials handling and storage facilities, roof vents, and slag pits (68). Modeling should not include emission units with allowable or potential emissions below the "practical quantitation limit" (PQL) or at least some fraction of the "maximum detection limit" (MDL) (68, 144). Also, industry has recommended to EPA that an emissions preprocessing step would reduce the overstatement of fugitive emissions of PM, in recognition of the fact that fugitive PM2 5 emissions are very rapidly deposited/absorbed by obstacles such as vegetation (68). This "fix" for use with AERMOD parallels the Agency-approved approach to modeling fugitive emissions from CMAQ (68). SILs 28. Modify the screening process so that smaller sources can easily screen out from the requirement to perform complex air modeling (e.g., increase SILs) (50). 29. Use the form of the standard for the NO2 and SO2 SILs or increase the level of the SILs (68, 144). The 1-hour N02 and S02 SILs are not in the form of the standard (i.e., 98th percentile for N02 & 99th for S02), making them less than 4% of the standard (68, 144). 30. The form of the SIL, which is currently the highest concentration, should be adjusted to be consistent with the form of the pollutant NAAQS (e.g., 4th highest 8-hour average for ozone) (144). 31. Utilize a justifiable, higher confidence interval in its SIL calculation approach for ozone and PM2.5 or, at a minimum, utilize a more transparent and straight-forward approach like the 4%-of-the-NAAQS approach it has used for other SILs (68). Ambient Air 32. Modify ambient air policy to make modeled impacts consistent with reasonably anticipated NAAQS exposures

		(64, 68, 89, 90, 143, 144, 161). Text in 40 CFR §50.1(e) concerning "exposures to pollutants" should be interpreted taking into consideration the averaging period and form of the NAAQS (68, 144) or Appendix W could be modified by adding: "Site-specific circumstances may be taken into account and receptors may be excluded from areas where natural, man-made or jurisdictional barriers preclude the potential for public exposure with the frequency or averaging time specified for the NAAQS or PSD increment that is under evaluation (68, 144)." EPA should also include a statement/ discussion in Appendix W to clarify that model receptors should be excluded from areas where the public does not have legal or physical access (68, 147). The exclusion also should apply in locations where the public access is limited in terms of frequency or duration relative to the form of the NAAQS (68). Attainment Designations/NAAQS 33. Most burdensome part of the permitting process is NAAQS modeling for "cause or contribute" – especially for NOx and Ozone (159). 34. Issue guidance to clarify the requirements for quantitative modeling of ozone (48). 35. Review Appendix W each time EPA reviews a NAAQS (68, 144). 36. Adopt an air quality modeling approach for attainment designations that reflects actual and expected future source operations (10). 37. Determine attainment via monitors (101). 38. As the NAAQS become more stringent and approach background levels, there needs to be a process to ensure that ambient monitors located near sources to be modeled are not already including the source's emissions in the background values developed from the ambient monitors (68, 144). 39. Do not model when it is difficult or impossible to access whether a single stationary source causes or contributes to NAAQS nonattainment (112). NA NSR 40. Make administrative changes to the NNSR provisions and its modeling guidance to reflect expected emissions from actual operations, rather than from a potential-to-emit basis (10).
NSR Implementation – 12 commenters	Resources for the Future (48), NAAQS Implementation Coalition (68), Beet Sugar Development Foundation (73), National Oil Seed Processors Association (85), American Iron & Steel Institute (92),	1. Facilitate permitting through grandfathering of applications when there are changes to the NAAQS (48, 92, 108, 126, 150). 2. Issue all implementation regulations and guidance promptly after a new NAAQS is finalized (68, 85, 92, 136, 143). 3. Revise current NAAQS implementation policy and guidance to allow more flexibility and less conservatism (as specified in additional included bulleted comments). EPA should also encourage permitting authorities to use their own judgement where EPA policy/guidance does not specifically address, or is obviously unsuited to, a particular situation (68). 4. Reinstate PM10 surrogacy policy until test methods for all types of PM are validated (144, 152). Otherwise, EPA

	National Lime Association (108), American Petroleum Institute (126), American Fuel & Petroleum Manufacturers (136), Council of Industrial Boiler Owners (143), American Forest & Paper Association (144), American Wood Council (152), Air Permitting Forum (150)	should allow applicants to exclude fugitive and area sources with minimal potential to generate PM2.5 emissions from assessments; cannot be accurately quantified and only have localized impacts (144, 152). 5. EPA should exclude condensible PM from PM10 and PM2.5 definitions until condensible PM measurement method issues are resolved or revise the PSD threshold levels to reflect addition of CPM into the definition (144, 152). 6. Reduce the frequency of annual source testing for compliance (73).
Enforcement – 9 commenters	Ameren (84), Industrial Energy Consumers of America (89), Steel Mfg. Assoc. & Specialty Steel Industry of North America (112), Associated General Contractors of America (114), Associated General Contractors of America (119), SSAB Enterprises (140), US Steel Corporation (147), Iowa Association of Business & Industry (154) Vinyl Institute (159)	1. Follow the states' lead on enforcement (84) 2. Be required to affirmatively rescind an investigation (84). 3. Do not force new control techs & emissions limits through enforcement (89, 140, 147) - e.g., flares (89), NSPS AA and AAa fugitive emissions (140), different monitoring techs (140) based on req. not included in regulation; small subset of facilities bearing burdens of evaluating techs not promoted through rulemaking/permitting (140). 4. Do not bring enforcement action under a state-issued permit based on highly questionable interpretations of CAA. Examples provided (112). 5. Be transparent in legal settlements, require presence/participation of all potentially impacted industries (112, 147). 6. Consider privacy, security, etc. when requiring mandatory online reporting of compliance & enfor. findings (114). 7. If BACT controls do not meet expected reductions, pursue a policy of modifying the NSR permit based on the results of post-construction performance testing, not through an enforcement action for penalties (140). 8. Revise Next Generation Enforcement Policy unfair and burdensome strategies (119, 154). 9. Take a collaborative rather than confrontational approach to regulations. Use of consent agreements as a driver for industry compliance is very punitive and inappropriate. 10. Amend Citizen Suit Provisions - Potential reforms include: limiting citizen suit penalties to violations of objective, numeric limitations rather than subjective, narrative standards; extend "notice period" beyond the current 60 days (giving reg. agencies more time to review notice of intent letters and initiate formal actions); clarify definition of "diligent prosecution" of alleged violations, thereby allowing fed/state authorities to exercise their primacy in enforcement and preventing unnecessary citizen suit intervention (119).
Other Comments – 12 commenters	PA Chamber of Business and Industry (10), The Fertilizer Institute (64), American Road and Transportation Builders	1. Facilities should be allowed to use the best available emission factors even if EPA has not formally approved them under the AP-42 (144, 152). 2. Develop an alternative method of evaluating fugitive emission contributions to ambient air from roadways to promote a more expeditious and cost-effective permitting processes that will result in increased job-growth (64).

	Association (66), NAAQS Implementation Coalition (68), National Oilseed Processors Association (85), Industrial Energy Consumers of America (89), Steel Manufacturing Association & Specialty Steel Industry of North America (112), Associated General Contractors of America (119), Motor and Equipment Manufacturers Association (137), American Forest and Paper Association (144), American Wood Council (152), NRDC (156)	Develop and advance criteria to verify new ambient monitoring technology before used in any regulatory or enforcement context (68, 144, 152). 4. Encourage early public involvement in rulemaking through greater use of advance notices (89), Follow proper notice & comment procedures to ensure that the regulations are being interpreted and applied consistently (85), referencing 1990 draft workshop manual (85). Establish via notice and comment rulemaking transparent permitting requirements (112). 5. The administration and Congress should establish a loser-pays provision requiring any plaintiff who files a legal challenge to block an infrastructure project to pay all related legal fees if their challenge is unsuccessful (119). 6. Social Cost of Carbon as a measurement needs to be further defined before it is used in guidance and/or regulation. This could be accomplished by further study and additional opportunities for participation and comment by the regulated community (66). 7. Commerce should play a stronger role with interagency review of how different agencies' regulations impact business. Commerce can also improve the economic analysis needed to assess domestic economic and competitiveness issues (137). 8. EPA rules account for 61-80% of the monetized benefits and 44-55% of the monetized costs. Rules that have a significant aim to improve air quality account for 98-99% of the benefits of EPA rules (156). 9. Research shows that environmental regulation does not kill jobs (156). 10. Energy efficiency standards provide massive benefits for consumers and industry (156).

Title V Permitting

Topic	Commenter(s)	Comment
General Permitting Process – 15 Commenters	Mount Vernon Mills (12), Anonymous (22), Independent Lubricant Manufacturers Association (37), Novelis (42), Composite Panel Association (56), Stupp Coatings (58), Tramontina USA (61), Eastman Chemical Company (62), National Marine Manufacturing Association (99), Steel Mfg Assoc &	1. Title V permitting is burdensome (99) and complex/inefficient/stifles investments without providing corresponding environmental benefits (112). 2. Eliminate duplicative reporting in title V and MACT programs (12). 3. Streamline the semi-annual and annual reports. They provide redundant information (22). 4. Eliminate the 6-month compliance report when nothing has changed at the facility, renewal of annual permit should suffice (58). 5. Remove EPA's redundant and unnecessary 45-day review period (56) to streamline the permitting process without negatively impacting local air quality based on rigorous state permit review and approvals (56). 6. Streamline compliance certifications, facilitate faster processing of permit modifications & reduce permit fees (170).

	Specialty Steel Industry of North America (112), The Plastics Industry Association (133), US Steel Corporation (147), Air Permitting Forum (150), the Vinyl Institute (159), Air Permitting Forum Attachment (170)	Five year permit renewal frequency is too short and burdensome (159). Extend permit validity from 5 years to 10 years (37, 61, 150), allowing manufacturing companies to justify capital investments without significant concerns of premature obsolesce due to stricter/newly issued regulations (61). Permit validity can be also extended from 5 to 20 years, with permit modifications made only when significant changes to a facility are made (42). 8. Simplify permitting by not requiring applicants to restate the same information from a previous permit renewal if processes have not changed (133, 147). 9. Decrease amount of time application renewals must be submitted in advance and minimize the amount of info required for them (133). 10. Ensure that the title V fees are being used exclusively for title V, minimize transaction costs, and encourage states to innovate with fees to fund expediting permits (150). 11. Actively review the existing program to identify opportunities to reduce costs, recognizing that the title V program was not intended to create new applicable emission standards or requirements (150). 12. Minimize the potential for stakeholders to use title V as an opportunity for additional review and litigation over issues already ruled on in the underlying NSR permit (150). 13. Recommend looking at/implementing provisions of the following programs: TN for reducing the periodic monitoring, recordkeeping, and reporting requirements of the Title V program by allowing certain "insignificant emissions units" to meet those requirements merely by virtue of the Responsible Official's certification of compliance (62); GA and WI for its expedited programs (133).

List of Commenters

Docket ID Number	Commenter Name	Docket ID Number	Commenter Name
2	Anonymous	32	Subaru of Indiana Automotive
3	Anonymous	33	Rick Gaffney, Pacific Boat Sales
4	Larry Townsend	34	anonymous
5	Shawn Green	35	Weil-McLain/ Marley Engineering Prod

6	National Federation of Independent Businesses	36	Eric Anderson
7	Paul Deters	37	Independent Lubricant Manufacturers Association
8	John Kennedy	38	Anonymous
9	Dale Anonymous	39	Association Connecting Electronics Industries
10	PA Chamber of Business and Industry	40	Manitowoc Cranes
11	John Henry	41	BD (Becton, Dickinson and Company)
12	Edward Cochrane, Mount Vernon Mills	42	Novelis
13	Francis Ouimet	43	Mosaic Fertilizer
14	Chromaflo	44	Pavement Coatings Technology Council
15	A Roesch	45	Rache Corporation
16	Int. Precious Metals Institute	46	AT&T
17	Carlos Angulo	47	Koppers Inc.
18	Insta-Fire Inc	48	Resources for the Future
19	Anonymous	49	Coopers Creek Chemical Corporation
20	Richard Ellinghausen	50	GAF Corporation
21	Shawn Somerday	51	National Stone, Sand and Gravel Association
22	Anonymous	52	Jacmel Jewelry
23	Penn McClatchey	53	American Composites Manufacturers Association
24	Girish Dubey	54	Marco Company
25	Anonymous	55	Treated Wood Council
26	Michael Goeller	56	Composite Panel Association
27	Anonymous	57	Jennifer Formoso
28	Carl Sheppard	58	Stupp Coatings
29	Douglas Eddy Sr.	59	Glenn Hudspeath
30	Anonymous	60	KIK Custom Products
31	Reynolds Consumer Products	61	Tramontina USA

Docket ID Number	Commenter Name	Docket ID Number	Commenter Name
62	Eastman Chemical Company	92	American Iron and Steel Institute
63	Council for Responsible Nutrition	93	Norcom, Inc.
64	The Fertilizer Institute	94	Institute for Policy Integrity
65	Hamlet Protein	95	Domtar
66	American Road & Transportation Builders Assoc.	96	National Mining Association

67	American Home Furnishings Alliance	97	Commercial Corporation
68	NAAQS Implementation Coalition	98	International Dairy Food Association
69	Domtar	99	National Marine Manufacturing Association
70	GMA	100	American Coatings Association
71	Whirlpool Foundation	101	The Aluminum Association
72	Anonymous	102	Renfro Corporation
73	Beet Sugar Development Foundation	103	The Biosimilars Counsel
74	Knouse Foods	104	Environmental Entrepreneurs
75	Southeastern Lumber Manufacturers Association	105	North American Die Casting Association
76	Boeing Company	106	American Foundry Society
77	Construction Industry Round Table (CIRT)	107	Chamber of Commerce of US
78	Software and Industry Information Association	108	National Lime Association
79	Northrop Grumman Corporation	109	Valero
80	Alliance of Automobile Manufacturers	110	Freeport-McMoran
81	Comment Withdrawn	111	Graphic Arts Coalition
82	Richline Group	112	Steel Mfg Assoc & Specialty Steel Industry of North Amer.
83	Trin Metals	113	Rod Beever/ Brad Dunn (United Cool Air)
84	Ameren	114	Associated General Contractors of America (AGC)
85	National Oilseed Processors Association	115	W.M Barr & Co.
86	Independent Petroleum Association of America	116	National Alliance of Forest Owners (NAFO)
87	American Forest and Paper Association, the Beer Institute, and the Agriculture & Commodities Transportation Coalition	117	National Mining Association (NMA)
88	Brick Industry Association	118	US Inventor
89	Industrial Energy Consumers of America	119	Associated General Contractors of America (AGC)
90	Flexible Packaging Association	120	National Tooling and Machine Assoc. & Precision Metalforming Assoc.
91	Plastic Pipes Institute	121	Halogenated Solvents Industry Alliance (HSIA)

Docket ID Number	Commenter Name	Docket ID Number	Commenter Name
122	American Herbal Products Association (AHPA)	152	American Wood Council
123	3M	153	Petroleum Equipment & Services Association
124	Manufactured Housing Institute (MHI)	154	Iowa Association of Business & Industry
125	BP America	155	Precision Machined Products Association

126	American Petroleum Institute (API)	156	NRDC
127	Portland Cement Association (PCA)	157	Nanomanufacturing Association
128	Theresa Pugh Consulting, LLC	158	Cement Kiln Recycling Coalition
129	Bipartisan Policy Center	159	Vinyl Institute
130	Susan Helper (Economics Prof. Case Western Univ.)	160	Troy Chemical Corp.
131	National Marine Manufacturers Association	161	NEDA/CAP
132	National Roofing Contractors Association	162	Duty Drawback Coalition
133	The Plastics Industry Association	163	Stone Systems Inc.
134	Nat. Refrigeration & Air Cond. Products Association	164	Footwear Distributors & Retailers of America
135	Metalized Ceramics and Braze Solutions	165	American Apparel & Footwear Association
136	American Fuel & Petroleum Manufacturers	166	James Conrad
137	Motor and Equipment Manufacturers Association	167	American Chemistry Council
138	Printing Industries of America	168	Electronic Health Record Association
139	Association of Home Appliance Manufacturers	169	Taylor Guitars
140	SSAB Enterprises (Electric Arc Furnaces)	170	Air Permitting Forum (duplicate submittal, but with attachment)
141	American Chemistry Council	[redacted]	
142	Greenheck		
143	Council of Industrial Boilers Owners		
144	American Forest and Paper Association (AF&PA)		
145	United Technologies		
146	National Association of Manufacturers		
147	US Steel Corporation		
148	TriState Generation and Transmission Association		
149	CropLifeAmerica		
150	Air Permitting Forum		
151	Association of American Railroads		

Department of Commerce's Request for Information (RFI) on
Streamlining Permitting and Reducing Regulatory Burdens

- Effort is in response to Presidential Memorandum *"Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing"* (Jan. 24, 2017; 82 FR 8667)
    - "Secretary of Commerce shall conduct outreach to stakeholders concerning the impact of Federal regulations on domestic manufacturing and shall solicit comments … concerning Federal actions to streamline permitting and reduce regulatory burdens …"
    - "Within 60 days after completion of the process … Secretary of Commerce shall submit a report to the President setting forth a plan to streamline Federal permitting processes for domestic manufacturing and to reduce regulatory burdens affecting domestic manufacturers. The report should identify priority actions as well as recommended deadlines for completing actions. The report also may include recommendations for any necessary changes to existing regulations or statutes, as well as actions to change policies, practices, or procedures …"
- Other concurrent permit streamlining efforts include:
    - EO 13771 *("Reducing Regulation and Controlling Regulatory Costs"*; Jan. 30, 2017), which directs agencies to manage costs of regulations and requires FY17 rule actions to meet a 2-to-1 repeal/replace offset ratio.
    - EO 13777 *("Enforcing the Regulatory Reform Agenda"*; Feb. 24, 2017), which requires each agency to designate a Regulatory Reform Officer, form a task force that will evaluate existing rules and recommend which ones to reform, and provide a report to the agency head after 90 days (May 24, 2017), and then periodically thereafter, that details agency's progress.
    - FAST-41 ("Fixing America's Surface Transportation" (FAST) Act of Title 41, signed Dec. 4, 2015, 42 USC 4370m), which provides for high-level oversight of Federal reviews and permitting of infrastructure and other "covered" projects that are subject to NEPA and are likely to exceed $200 million. Covered projects are required to be posted on the Permitting Dashboard to track project timelines and to improve coordination, transparency, and accountability.
- From the RFI (March 7, 2017; 82 FR 12786-12788):
    - "… the Secretary of Commerce, in coordination with … appropriate agency heads, … is soliciting comments from the public concerning Federal actions to streamline permitting for the construction and expansion of domestic manufacturing facilities and to reduce regulatory burdens for domestic manufacturers."

- Defines "domestic manufacturers" as "private businesses located in the United States (and its territories) engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products, consistent with the 2017 North American Industry Classification System (NAICS) definition of Sector 31–33: Manufacturing."

- "Responses to this RFI will inform the Secretary's report to the President which will set forth guidelines for Federal permitting and regulatory agencies to streamline Federal permitting processes for domestic manufacturing and reduce regulatory burdens affecting domestic manufacturers. The plan will be coordinated with related activities under existing laws (*e.g.,* FAST–41) and executive actions (*e.g.,* Executive Order 13771 …)".

- The comment period closed March 31, 2017, and 170 comments were submitted.
  - Comments are available at: https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=DOC-2017-0001

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Title V NSR Lookback / PacifiCorp-Hunter Title V Petition Response Briefing Paper Packet Prepared by OGC and ORC

Overview

The pages that follow provide detailed background on the topic of reviewing Clean Air Act stationary source construction permitting issues in the context of the Title V operating permit program (often called "NSR Lookback" by EPA staff). This also includes specifics on the pending PacifiCorp-Hunter Title V petition response, which raises these issues. The materials that follow start with a general overview of the issue and then progress to provide increasing level of detail intended for an interdisciplinary audience including policymakers and attorneys. Readers are encouraged review the list of papers below and exercise personal discretion to review as much or as little of this material as each person would find helpful to develop an understanding of the NSR lookback issue and the pros and cons of the options for addressing the issue in the context of the Hunter petition and the broader policy and procedural landscape.

Briefing Packet Contents (Office(s) That Wrote Document in Parenthesis):

1. Bigger Picture Policy and Strategic Considerations in Upcoming Title V Petition Orders (OGC Draft of 5 Bullets for Senior Staff)

2. Background on NSR Lookback (OGC/ORC)

3. Procedural Options for Narrowing Lookback at NSR Issues (OGC/ORC)

4. Briefing Paper on Options for Hunter Title V Order (OAQPS, 7/27)

5. Key Regulatory and Statutory Provisions (OGC/ORC)

6. Background on PSD Program Administration and EPA Oversight Under Clean Air Act Title I Authority (OGC/ORC)

7. Previous EPA Statements in SIP Actions (OGC/ORC)

8. Basic Legal Theory to Support Narrowing NSR Lookback in Title V (OGC/ORC)

9. Legal Analysis of Support for Draft Legal Theory and Other Considerations (OGC/ORC)

10. Memo on Enforcement Implications (OECA)

11. Draft Language to Help Limit Enforcement Concerns (OGC)

12. Appendix of Partial List of Orders Granting Petitions Involving NSR Lookback

13. Appendix of Summary of Title V Legislative History

Bigger Picture Policy and Strategic Considerations in Upcoming Title V Petition Orders

- Title V of the Clean Air Act requires larger stationary sources to obtain an operating permit that consolidates all of the Clean Air Act requirements applicable to that source into a single permit document for the source. These includes the requirements of NSPS, NESHAPs, SIPs, and construction permitting programs for minor and major sources.

- Title V permits are primarily issued by states under programs approved by EPA. Title V of the Act provides EPA with an opportunity to issue an order objecting to a state-issued Title V permit that does not conform to the requirements of the Act and an opportunity for citizens to petition EPA to object to such a permit. If EPA objects, the state is required to revise the Title V permit to address the objection and EPA is to take over and issue or deny the Title V permit if the state does not meet the Agency's objection.

- EPA has interpreted the Title V provisions to allow citizen petitions for objection to address whether the Title V permit incorporates all the necessary preconstruction permitting requirements applicable to a source under the New Source Review program. Since the late 1990s, in response to such petitions, EPA's review has extended beyond the relatively simple question of whether the title V permit incorporates the terms and conditions of a previously-issue construction permit. In some instances, the EPA has considered the merits of a petitioner's argument that the limits in a previously-issued permits were not properly derived, that a source that obtained a construction permit obtained the proper permit (major or minor source), or whether a source that did not obtain any construction permit for a prior modification was in fact required to do so.

- Both industry and state stakeholders have periodically raised concern with the scope of EPA's "lookback" at construction permitting in the Title V petition process, arguing that EPA's interpretation of the Act improperly allows collateral attacks on the substance of construction permitting decisions that are final and could have been appealed contemporaneous with their issuance. The review of NSR applicability questions and the derivation of NSR permitting conditions (such a BACT analysis) is also time-consuming for EPA staff and can substantially delay responses to some petitions for objection (particularly where the construction occurred many years earlier). Recent comments in response to the Presidential Memorandum on permit streamlining as well as the Executive Order on regulatory reform (13777) have urged that EPA limit opportunities to "re-litigate" NSR permit issues in the Title V petition process.

- EPA has several pending Title V petitions for objection that raise "NSR lookback" issues. Two petitions with deadlines for EPA's response in October 2017 present opportunities for the Administrator to commence a process of incrementally narrowing the scope of EPA's review of construction permitting issues in the Title V permitting process through case-by-case adjudications. However, such narrowing would reflect a significant shift in EPA policy that would benefit from careful consideration of implications for enforcement and oversight of the construction permitting requirements (through consultation with EPA Regional Offices and the Office of Enforcement and Compliance Assurance) and could also be pursued either through a rulemaking process with public notice and comment or an interpretive rule or policy statement.

- OAQPS believes that the current PacificCorp Hunter petition response provides the best opportunity to pursue the no NSR lookback approach. The petition asks the EPA to revisit an NSR applicability decision made 20 years ago that was subject to public notice and the opportunity for judicial review. The EPA has 2 options for response: (1) deny the claim based on a no NSR lookback rationale; or (2) deny based on the petitioner's failure to demonstrate that the applicability determination was incorrect (which would require looking back at the 20-year old applicability determination). OAQPS believes that the no NSR lookback option is preferable for two reasons. First, if we do not pursue no NSR lookback in this petition response, where the facts are so ideal, it may be more difficult to take this position in future title V petition responses (including another response due in October). Second, relying on the alternative demonstration-based deny argument in this petition response would involve significant policy and legal risks.

Background on NSR "Lookback"

What is NSR "Lookback"
NSR review in title V presents at least three broad scenarios:

- "Scenario 1" – Major Source Permit Issued to Approve Construction/Modification
- "Scenario 2" – Minor Source Permit Issued to Approve Construction/Modification
- "Scenario 3" – No Permit Issued to Approve Construction/Modification
    - e.g. Routine Maintenance, Repair, or Replacement

Under both Scenarios 1 and 2, the state's issuance of the construction permit can either precede the Title V permit or occur at the same time and in the same administrative process. Some states have exercised available discretion under EPA rules to "merge" their construction and operating permit programs. The "lookback" label derives from the former situation, but EPA staff generally use term to include the latter as well.

The Hunter Petition involves "Scenario 2." The legal theory on narrowing NSR lookback developed for this petition response could cover both Scenario 1 and Scenario 2.

Previous EPA Statements on NSR Lookback in title V:

One of the first instances where EPA discussed this concept was a 1997 Title V petition order issued by Administrator Browner entitled *In re Shintech Inc.*, Order on Petition, Permit Nos. 2466-VO, 2467-VO, 2468-VO (Sept. 10, 1997). In this order, the Administrator said the following:

> Where a state or local government has a SIP-approved PSD program, the merits of PSD issues can be ripe for consideration in a timely petition to object under Title V. Under 40 CFR § 70.1(b), "all sources subject to Title V must have a permit to operate that assures compliance by the source with all applicable requirements." Applicable requirements are defined in section 70.2 to include "(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the [Clean Air] Act…." The LDEQ defines "federal applicable requirement, in relevant part, to include "any standard or other requirement provided for in the Louisiana State Implementation Plan approved or promulgated by EPA through rulemaking under title I of the Clean Air Act that implements the relevant requirements of the Clean Air Act, including any revisions to that plan promulgated in 40 CFR part 52, subpart T." LAC 33:III.502. Thus, **the applicable requirements** of the Shintech Permits **include the requirement to obtain a PSD permit that in turn complies with the applicable PSD requirements** under the Act, EPA regulations, and the Louisiana SIP.

Id. at 3 n.2 (emphasis added).

A few years later, in a letter responding to requests from permitting authorities, the Director of the Office of Air Quality Planning and Standards articulated the EPA's current understanding of

the interaction of title I and title V. Letter from John S. Seitz, U.S. EPA, to Robert Hodanbosi, STAPPA/ALAPCO (May 20, 1999).[1] The letter stated that "applicable requirements include the requirement to obtain preconstruction permits that comply with applicable preconstruction review requirements under the Act, EPA regulations, and SIP's." *Id.* Enclosure A at 2. The letter claimed that section 505(b) of the Act provides a form of corrective action in addition to all the other enforcement authorities the EPA has under the Act. *Id.* While it stated that generally the Agency will not object to a title V permit for determinations "made long ago[,] . . . EPA may object to [a more recent] title V permit due to an improper [preconstruction] determination." *Id.* Enclosure at 2-3. Additionally, the letter said that the EPA could object to a title V permit where "EPA believes that an emission unit has not gone through the proper preconstruction permitting process." *Id.* Enclosure at 3.[2]

In a 1999 Title V petition order where EPA evaluated the adequacy of the PSD permit and denied the petition, the Administrator explained that:

> The merits of federal preconstruction review permits can be ripe for consideration in a timely petition to object under title V. See Order *In re* Shintech Inc., at 3 n.2 (Sept. 10, 1997). Under 40 CFR § 70.1(b), "all sources subject to Title V must have a permit to operate that assures compliance by the source with all applicable requirements." Applicable requirements are defined in 40 CFR § 70.2 to include: "(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the [Clean Air] Act...." Such applicable requirements include the requirement to obtain preconstruction permits that comply with preconstruction review requirements under the Act, EPA regulations, and State Implementation Plans ("SIPs"). See generally CAA §§ 110(a)(2)(C), 160-69, & 173; 40 CFR §§ 51.160-66& 52.21. Thus, the applicable requirements of the PABCO Permit include the requirement to obtain a preconstruction permit that complies with requirements under the Act, EPA regulations, and the Nevada SIP.

In re Pacific Coast Building Products, Inc., Order on Petition, Permit No. A00011 (Dec. 10, 1999).

In cases where construction permits were issued, EPA has reviewed whether the Title V petitioner demonstrated that the permitting authority's exercise of its permitting discretion under its SIP-approved NSR regulations was unreasonable or arbitrary. *See e.g.*, *In re American Electric Power – John W. Turk Plant*, Order on Petition No. VI-2008-01 (Dec. 15, 2009); *In re Cash Creek Generation*, Order on Petition Nos. IV-2008-1 & IV-2008-2 (Dec. 15, 2009) ("Cash Creek I"); *In re Cash Creek Generation*, Order on Petition No. IV-2010-4 (June 22, 2012) ("Cash Creek II"). In cases where petitions alleged NSR requirements were missing from a Title V permit, the EPA has also considered applicability of major NSR in responding to petitions. *See*

[1] *Available* at https://www.epa.gov/sites/production/files/2015-08/documents/hodan7.pdf.

[2] The EPA has also used this broad reading of the Agency's oversight authority under title V as part of the justification for approving state PSD programs. *See* Approval and Promulgation of Implementation Plans; Oregon, 68 Fed. Reg. 2891, 2899 (Jan. 22, 2003); *see also* Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes; Idaho, 68 Fed. Reg. 2217, 2221 (Jan. 16, 2003). In these approvals the EPA pointed to its authority under title I, sections 113 and 167, and stated that title V "has added new tools" for addressing concerns with implementation of PSD requirements by allowing for objection to title V permits under section 505(b) of the Act.

e.g., *In re CEMEX, Inc. – Lyons Cement Plant*, Order on Petition VIII-2008-01 (Apr. 20, 2009); *In re Wisconsin Power and Light – Columbia Generating Stations*, Order on Petition No. V-2008-1 (Oct. 8, 2009).

A partial list of title V orders where EPA has 'looked back' at NSR issues is included in an Appendix.

Procedural Options for Narrowing Lookback at NSR Issues

Adjudication via title V Orders	Rulemaking	Policy/Interpretive Statement
- Case-by-case based on the specific facts and limited applicability - *Paralyzed Veterans* doctrine on change in interpretation no longer applies so notice & comment rulemaking is not necessary - Short time horizon for completion; however, less time for input from other offices - No opportunity to for EPA to add information to defensive record - Challenge would likely be in circuit other than D.C. Circuit (upcoming petitions where this would apply would likely be challenged in the 10th, 8th, and 5th circuits) - No opportunity for public comment or need for agency response	- Could result in comprehensive scope; however, would likely want to consider a wider swath of the limitations/implications in whatever scope is selected at the time of rulemaking instead of being able to slowly develop the contours of theory - Longer time horizon until it becomes effective - Record could include a broader range of information, including prior permit experiences by EPA, states, and sources. - D.C. Circuit review - Public notice and comment; can be challenged by more parties than just the petitioner in an individual case - Longer time horizon makes it easier to get input from the other nine Regional offices and OECA	- Could be issued before or after responding to petitions - Combines some of the benefits and risks from both adjudication and rulemaking

Briefing Paper on Options for Hunter Order

PacifiCorp Hunter—Title V Petition Response

Purpose: To recommend for the Administrator's signature an Order denying a petition requesting that the EPA object to a title V renewal permit issued to the PacifiCorp Hunter Power Plant in Utah.

Background

Hunter Facility: The Hunter Plant is a coal-fired power plant located in Emery County, UT, comprising 3 units with a total capacity of 1320 MW.
Permitting Authority: The Utah DEQ Department of Air Quality (UDAQ).
Permitting History: First title V permit was issued in 1998. This petition is on the renewal permit that was issued on March 3, 2016.
Petition History: The April 2016 petition is from the Sierra Club. The petition contains five claims. The claims are related to construction activities and NSR permit actions in 1997, 2008 and 2010. Pursuant to a consent decree, the EPA must respond to the petition by August 31, 2017. *[OGC NOTE: Response date is now October 16, 2017]*

Hunter Petition Response: Summary

- Petition from Sierra Club challenges a TV renewal permit issued to the Hunter Power Plant in Utah.
- Petition contains 5 claims: 3 related to past PSD and minor NSR applicability; 1 related to PALs established in 2008; and 1 claiming UDAQ's response to comments was inadequate.
- According to a consent decree filed with the court, the EPA must respond to the petition by August 31, 2017.

Petition Claims and Recommended Response Options

Petitioner's Claims: The petition contains 5 claims.
Claim 1: The Petitioner claims that a project permitted by the UDAQ in 1997 as a synthetic minor modification should have been subject to PSD. The Petitioner claims that UDAQ improperly calculated pre-project actual emissions and, under the actual-to-potential emissions test required under the SIP, the project would have triggered PSD.

- **Option 1 Response:** This claim would be **denied** based on our interpretation of the scope of title V and our regulations: **No NSR lookback in title V**. Under Option 1, we would state that title V is not the appropriate mechanism to revisit a final state construction permitting decision where public notice had been provided and judicial review was available. We would be interpreting our definition of "applicable requirement" to only reach the terms and conditions of preconstruction permits (both major and minor) issued pursuant to title I and would not include reviewing preconstruction permitting applicability where a determination has been previously made. This legal and policy framework applies to the scope of title V itself, not just the petition process. Specifically, we would be stating that **permitting authorities would not need to reevaluate prior construction permit decisions when reviewing or acting on title V permit applications in order to determine the applicable requirements**, an approach that is consistent with the final 1992 title V regulations.
- **Option 2 Response:** This claim would be **denied** based on an interpretation of the title V petition provisions: **No NSR lookback in title V petitions**. EPA would determine that because of the limited oversight and the scope of our review in title V, it would be inappropriate to revisit a final state construction permitting decision ***in a petition*** where public notice had been provided and judicial review was available. Permitting agencies would still be responsible for considering these issues when writing a title V permit and would still need to respond to any significant comments on these issues.
- **Option 3 Response:** Deny because the Petitioner failed to demonstrate that PSD would have applied under the applicable PSD rules at the time. This approach is consistent with the approach we have taken in prior title V Orders.

Claim 2: The Petitioner claims that the PALs contained in a 2008 NSR permit authorizing construction of pollution controls and other capital projects were unlawful because they were not issued pursuant to

SIP-approved rules and therefore must be removed from the permit. The Petitioner also claims that UDAQ failed to make required adjustments to the PALs and that the procedures for incorporating the PALs into the title V permit were invalid and illegal.

- Response: This claim would be **denied** because the Petitioner did not demonstrate the lack of federal enforceability of the PALs established in 2008 required that they be removed from the title V permit. If we accept Petitioner's argument that the PALs are state-only requirements, EPA has no authority to object to a title V petition based on any alleged deficiencies with those requirements. Petitioner's claim should have been that these limits should have been listed as state-only limits; however, this objection was not raised during the public comment period or the petition, as Petitioner merely claimed they were "unlawful" and must be removed from the permit. The Petitioner's claims regarding UDAQ's incorporation of the PALs into Hunter's title V permit are moot.

Claim 3: The Petitioner claims that UDAQ approved additional modifications to Unit 1 in 2010 that were not approved under the 2008 NSR permit and that those projects triggered additional minor NSR preconstruction permitting requirements (including BACT).

- Response: This claim would be **denied** because the Petitioner failed to acknowledge that UDAQ considered the 2010 activities as adjustments to the scope and schedule of the 2008 NSR permit-approved project and failed to demonstrate that this was unreasonable under Utah's NSR program.

Claim 4: The Petitioner claims that modifications made to Unit 1 in 2010 triggered PSD for NOx, in part based on the unlawful PALs alleged in Claim 2.

- Response: This claim would be **denied** based on: 1) the same rationale supporting denial of Claim 3; 2) the fact that the Petitioner did not consider whether a state-only enforceable PAL constitutes a practically enforceable limitation for purposes of their analysis and conclusion that PSD was triggered; and 3) the fact that the Petitioner's emissions increase calculation is deficient.

Claim 5: The Petitioner claims that UDAQ's contention in the Response to Comments (RTC) that the Petitioner's comments were beyond the scope of the title V permit renewal or dealt with compliance issues is wrong as a matter of law.

- Option 1: Response: This claim would be **denied** based on the no NSR lookback legal/policy rationale. This response is consistent with the approach in Utah's RTC.
- Option 2: If Option 2 is selected for Claim 1, no viable deny is available and a **record is inadequate response** would be required.
- Option 3: If Option 3 is selected for Claim 1, **deny on failure to demonstrate a flaw in the permit**. We have previously granted several claims that the RTC is inadequate on the basis that the Petitioner identified a flaw in the permit. However, we have not previously denied a claim on this basis.

Timing

Existing Consent Decree: According to a consent decree filed with the court, the EPA must respond to the petition by August 31, 2017. [*OGC NOTE: New response date of October 16, 2017 by agreement with the Petitioners]*

Key Regulatory and Statutory Provisions

Title V of the Clean Air Act

- 42 USC 7661c(a)" "Each permit . . . shall include enforceable emission limitations and standards . . . to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan."

- 42 U.S.C. §7661d(b)(1), (2): The Administrator's duty to object to a permit from a permitting authority and a petition is based on a demonstration that the "permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan. . ."]

- 42 U.S.C. § 7661c(a): "Each permit . . . shall include enforceable emission limitations and standards . . . to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan."

- 42 U.S.C. § 7661(3): "Schedule of compliance. The term "schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition"

- 42 U.S.C. §7661a(a): "Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification"

- 42 U.S.C. § 7661a(b)(5): Permitting authorities "have adequate authority to . . . issue permits and assure compliance . . . with each applicable standard, regulation, or requirement under this chapter."

- 42 U.S.C. § 7661b(b): The regulations to implement the program shall include a "requirement that the applicant submit with the application a compliance plan describing how the source will comply with all applicable requirements under this chapter."

- Several other statements regarding assuring compliance with requirements "under this chapter" (Chapter refers to the Clean Air Act as a whole)

Title V Regulations 40 C.F.R. Part 70

- 40 CFR 70.2, Definition of Applicable Requirement "All of the following as they apply to emission units in a part 70 source …:"
  - (1) "Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter"
  - (2) "Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including Parts C or D, of the Act"
- In many other places in Part 70, the EPA refers to assuring compliance with the "applicable requirements of the Act"

Regulatory Preamble

Statements from the 1991-1992 preambles to the proposed and final Part 70 regulations

- Proposed Title V Regulations, 56 FR 21712, 21721:
  - "I. New Source Review/Title V Relationship
  - Decisions made under the NSR and/or PSD programs (e.g., best available control technology (BACT)) define applicable SIP requirements for the title V source and, if they are not otherwise changed, can be incorporated without further review into the operating permit for the source. The title V program is not intended to interfere in any way with the expeditious processing of new source permits. The permitting authority is required to have reasonable procedures and resources to assign priority to action on permits for new construction or modification (503(c))."
- Proposed Title V Regulations, 56 FR 21712, 21738-39 (explanation of definition of applicable requirement):
  - "(d) New Source Review. The requirement under title V that operating permit programs assure compliance with all applicable requirements under the Act includes the requirements imposed in any NSR permit. Any requirements established during the preconstruction review process also apply to the source for

purposes of implementing title V. If the source meets the limits in its NSR permit, the title V operating permit would incorporate these limits without further review. The intent of title V is not to second-guess the results of any State NSR program."

- Final Title V Regulations, 57 FR 32250, 32259:

  - "Decisions made under the NSR and/or PSD programs [e.g., best available control technology (BACT)] define certain applicable SIP requirements for the title V source. The permitting authority is required to have reasonable procedures and resources to assign priority to action on permits for new construction or modification [503(c)]."

- Final Title V Regulations 57 FR 32250, 32276:

  - "F. Section 70.6 – Permit Content
  1. Applicable Requirements of the Act
  (d) Preconstruction permits under regulations approved or promulgated under title I. This definition was changed in part to clarify that applicable requirements include terms and conditions of preconstruction permits issued pursuant to SIP's and other regulations approved by EPA in formal rulemaking after notice and an opportunity for public comment."

    - Proposal Language: "Terms and conditions of any preconstruction permits issued pursuant to title I, part C or D of the Act."

    - Final Language: "Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, *including* parts C or D, of the Act;"

- Final Title V Regulations, 57 FR 32250, 32285:

  - "Thus, while increases in emissions up to title I significance levels would normally escape governmental and public review entirely under the NSR procedures of parts C and D, the same changes to a title V permit will be reviewed by the State and EPA for compliance with all applicable requirements of the Act."

- Final Title V Regulations, 57 FR 32250, 32261:

  - "Under part 70, within 3 years after EPA approval of a state permit program, the State will be required to issue permits covering all applicable requirements of the Act, to all sources in its jurisdiction . . ."

- Final Title V Regulations, 57 FR 32250, 32280:

- "[T]he procedures for revising a permit should provide appropriate opportunities for the permitted source, permitting authority, EPA, affected States, and, where appropriate, the public to determine that the permit faithfully applies the Act's requirements."

- Final Title V Regulations, 57 FR 32250, 32267:

  - "The EPA's regulations . . . are designed to encourage emissions trading as extensively as possible consistent with the requirement that title V permits comply with the applicable requirements of the Act"

Background on PSD Program Administration and EPA Oversight Under Clean Air Act Title I Authority

The Prevention of Significant Deterioration (PSD) program requires a permit to construct or modify a major stationary source located in an area that is in attainment or is unclassifiable for at least one criteria pollutant.

PSD Program Administration

There are three different ways in which the PSD program is administered. Most PSD permits are issued by states under an approved state implementation plan (SIP). EPA calls these states "SIP-approved." These states issue permits under state law authority that EPA determines is sufficient to meet the minimum federal requirements for a PSD program.[3] If a state does not have an approved program, the Federal PSD program applies[4] under a Federal Implementation Plan (FIP). There are two different ways in which the Federal PSD program is administered. Many states that lack an approved PSD program implement the federal rules and issue permits under a delegation of federal law authority (they stand in the shoes of an EPA Regional Office). These states are called "Delegated." Absent EPA delegation to a state permitting authority, an EPA Regional Office directly administers the Federal PSD program and issues permits. This is generally the case in tribal lands and some California Air Districts.
PSD permits may be issued independently under these various state or federal procedures. For many sources, the PSD permit process has been completed before the start of the Title V permit process. However, states have the discretion to combine PSD and Title V permit procedures and complete one "merged" public notice and comment process that is designed to satisfy both sets of requirements at the same time. Several states have such a system in place.

Administrative and Judicial Review of PSD Permits

PSD permits issued by SIP-approved states are state actions subject to state administrative procedures. An approved PSD state must provide an opportunity for judicial review of PSD permits in state courts. Although not required, many states also provide an opportunity for an administrative appeal of a PSD permit before going to state court. Under the Federal program, if EPA or a delegated state issues a permit, it must first be challenged by filing an administrative appeal with the EPA Environmental Appeals Board (EAB). After conclusion of an appeal to the EAB, section 307(b) of the Clean Air Act authorizes judicial review before the applicable U.S. Circuit court for the area where the proposed source is located.

EPA Oversight of State PSD Permitting Program

EPA's most frequently used method of formal overseeing state PSD permitting decisions is to submit public comments on PSD permits. This is expressly contemplated by the Clean Air Act.

[3] Under section 110(a)(2)(C) of the Clean Air Act, State Implementation Plans are required to contain PSD and nonattainment NSR permitting programs. EPA has established regulations at 40 CFR 51.166 and 40 CFR 51.165 that establish the minimum criteria for such programs.
[4] The federal program requirements are reflected in 40 CFR 52.21. To establish the FIP, EPA incorporates section 52.21 into state-specific regulation in Part 52 of our regulations.

Section 165(a)(2) of the Act requires an opportunity "for interested persons including representatives of the Administrator" to submit written or oral comments on a proposed permit. EPA Regional offices routinely submit public comments on state PSD permits to help ensure they meet the requirements of the CAA, EPA regulations, and the approved state regulations. EPA's public comment opportunity is the same as that available to any member of the public. States are required to inform EPA of proposed PSD permits,[5] but EPA does not have any unique comment rights or comment periods.

Under Title I of the Act, EPA has no authority to issue an administrative objection or "veto" of a SIP-approved state PSD permit. However, EPA has authority to issue a "stop construction order" to enjoin construction of a source without a permit or a source constructing on the basis of a deficient permit. CAA § 167; CAA § 113(a)(5)(A); *Alaska v. EPA*, 540 US 461 (2004) (affirming that this authority is not limited to circumstances where a source failed to obtain a permit). EPA has grounds for issuing such an order under section 167 when "construction … does not conform to the requirement of [Part C, Title I of the CAA]." Section 113(a)(5) may be used when a "State is not acting in compliance with any requirement or prohibition of the chapter relating to construction of new sources or the modification of existing sources." A stop construction order is final agency action that is immediately reviewable in Circuit Courts under CAA § 307(b)(1). *Alaska v. United States EPA*, 244 F.3d 748, 750-751 (9th Cir. 2001). EPA does not have a mandatory duty to issue a stop construction order, and failure to issue such an order is not reviewable. *Sierra Club v. Jackson*, 648 F.3d 848 (D.C. Cir. 2011).

Because a stop construction order enjoins a source from constructing and is immediately reviewable, EPA has been reluctant to apply this authority absent compelling circumstances. EPA has also been reluctant to file appeals of state permits in state forums or the EAB. Appealing a permit decision in state court would require approval from the Solicitor General's office.

These perceived shortcomings in the EPA's Title I PSD oversight tools have been a factor motivating EPA to read its Title V authority to enable EPA and citizens to review PSD applicability decisions and permit content in the Title V process. EPA has interpreted the Title V petition requirements to enable petitioners to raise issues concerning whether a Title V permit contains all PSD program requirements applicable to the source under an approved SIP. This may include conditions based on PSD permits that should have been obtained (but were not) or inadequacies in the conditions of PSD permits that a source did obtain. EPA has exercised this authority independent of any state appeals process for PSD permits or minor source permits. However, EPA has declined in the Title V petition process to review the content of major source PSD permits that are subject to review by the Environmental Appeals Board. See *In re Kawaihe Cogeneration Project*, Order on Petition, Permit No. 0001-01-C (Mar. 10, 1997).

[5] CAA § 165(d)(1); 40 C.F.R. 51.166(q)(1)(iv), (p)(1)
40 C.F.R. 51.161(d)

Previous EPA Statements in SIP Actions

In response to public comments on state PSD program and Infrastructure SIP approvals, EPA has discussed the use of the Title V program as an available oversight tool to evaluate the adequacy of PSD permits that would be issued by the state under the approved PSD program. The following language from the Oregon PSD SIP approval issued by Region 10 in 2002 is illustrative:

> In approving the Oregon new source review rules, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of the Oregon new source review rules does not divest EPA of the duty to continue appropriate oversight to insure that permits issued by Oregon are consistent with the requirements of the Act, EPA regulations, and the SIP. EPA's authority to oversee permit program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the CAA regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.
>
> **Enactment of title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by States.** Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is "not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan."
>
> Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the State decision fails to comply with applicable requirements. In determining whether a title V permit incorporating PSD or part D NSR provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining BACT or LAER, assessing air quality impacts, meeting Class I area requirements, and other PSD or Part D requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds

> properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD or Part D NSR permit were properly incorporated into the title V operating permit.

See Approval and Promulgation of Implementation Plans; Oregon, 68 Fed. Reg. 2891, 2899 (Jan. 22, 2003) (emphasis added).

EPA used similar language in a 2003 approval for the State of Idaho. *See,* Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes; Idaho, 68 Fed. Reg. 2217, 2221 (Jan. 16, 2003).

Basic Legal Theory to Support Narrowing NSR Lookback in Title V

Basic Theory

As applied to the requirements derived from case-by-case construction permitting programs contained in State Implementation Plans, there is some ambiguity in the meaning of the term "applicable requirement" under the Title V provisions of the Clean Air Act. EPA's regulations define the term "applicable requirement" to include both the terms and conditions of issued construction permit and a "standard and other requirement" reflect in the applicable State Implementation Plan, which include requirements to that stationary sources obtain different types of construction permits depending on the nature of proposed construction, the degree to that construction is projected to increases air pollutant emissions, and whether the area is in attainment with the NAAQS for various pollutants. These provisions in the Act and EPA regulations can be read to mean that when a permitting agency has made a source-specific, permitting decision under title I of the Act that is subject to public notice and comment and judicial review, such a decision will "define certain applicable SIP requirements for the title V source." 57 Fed. Reg. 32250, 32259 (July 21, 1992).[6] Thus, the terms and conditions of such a permit are clearly applicable requirements that must be incorporated into a Title V permit. However, there is no direct language in the Clean Air Act or legislative history showing that Congress intended for such terms and conditions of a construction permit to be subject to reconsideration through the Title V permit process, which has the primary function of collecting the requirements applicable to each individual source into a single, enforceable permit document. Where the derivation of permit terms and conditions is otherwise subject to an opportunity to public comment and judicial review, an additional opportunity for review of such matters through the Title V program is unnecessary and duplicative.

In addition, when a permitting agency, in issuing a minor NSR permit pursuant to a SIP through an open and transparent process, determines that the PSD or Nonattainment NSR requirements for construction of a major source or major modification of such source is not an applicable requirement, this decision may also be considered as defining the applicable requirement of the SIP for that source (determining applicability of major NSR requirements under the SIP for the approved preconstruction activities) for the limited purposes of title V of the Act. There is likewise no direct language in the statute or legislative history that indicate Congress intended for such permitting decisions to be reconsidered in the Title V process. EPA can also point to statements that suggest this was EPA's original understanding of the relationship between Title V and the construction permitting program at the time it wrote the definition of "applicable requirement" in the Title V regulations

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[6] Utah's title V regulations employ a parallel structure to define applicable requirement to include:
"(a) Any standard or other requirement provided for in the State Implementation Plan;
(b) Any term or condition of any approval order issued under R307-401" R307-415-3.

Potential Limitations on Application of Theory in Title V Petition Orders:

- No Title I permitting occurred at all
- The state did not provide an opportunity for the public to comment on the construction permit
- The state did not provide adequate notice for the public to comment on the permit
- The state did not provide an opportunity for judicial review of the construction permit or there would not have been an opportunity for meaningful judicial review (e.g., a SIP-gap)
- The source constructed via a general permit or prohibitory rules and the public did not have an opportunity to comment/appeal the source-specific application of those provisions
- Note: A carve out to retain EPA authority to comment or object on construction permit issues within the title V context could undermine this theory.

Factual and Policy Support for Narrowed NSR Lookback Policy for Hunter Petition Response

The following facts and policy considerations may be referenced to support applying this interpretation in the Hunter Title V petition order. EPA could say that the interpretation does not apply in situations where these elements are not present.

- **Element of New Policy. Notice to Public of State Construction Permit**: the public was on notice that a permitting decision was proposed for the minor NSR permit issued in 1997
    - The notice clearly indicated that permitting actions were being taken to avoid PSD applicability
    - In other permits, it may not always be the case that notice was so clear, but if EPA proceeds in this direction through case-by-case adjudication in Title V petition order, EPA can define the scope of application of it policy/legal interpretation when confronted by cases where notice wasn't as clear or lacking or where there was no notice.

- **Element of New Policy. Judicial review of State Construction Permit**: This approach respects the judicial review process that Utah provides for minor source construction (which appears to meet the standards for judicial review EPA has historically articulated.[7]

[7] **Oregon.** State Supreme Court issued decision that limited judicial review of Clean Air Act preconstruction permits. *Local No. 290, Plumbers and Pipefitters v. Or. Dep't of Envtl. Quality*, 919 P.2d 1168 (1996). EPA received a citizen petition requesting that EPA withdraw approval of title V and CWA programs because they no longer met federal minimum requirements. After discussions and correspondence with State, EPA notified Oregon that they must provide the same opportunities for permit appeal in State court as those available in federal court, the State agreed and passed legislation correcting the issue. CAA section 502(b)(6), 40 CFR 70.4(b)(3)(x). EPA issued Notice of Deficiency (NOD). 63 FR 65783 (Nov. 30, 1998).
Virginia. EPA disapproved the Virginia Title V permit program, for several reasons, including

- Preconstruction permitting decisions may be very complex and a state's adjudicatory process may provide a forum for robust consideration of the issues
- This step of the petition process does not allow all parties with an interest to participate. A state's response to comments on the Title V permit may be an incomplete record of its rationale for an NSR decision. The state may not even have the full information to justify that decision (for instance, if it has been 20 years since that permitting action).
    - A state is not required to consult the source in responding to comments (though some do), but a source likely could participate in a state court challenge to its permit.
- Broad EPA review creates uncertainty regarding permitting decisions made after public notice and the opportunity to comment and that could have been challenged in a state adjudicatory process. At the time EPA issues a title V petition order, EPA's objection does not include the same safeguard of judicial review, those opportunities come at later steps.
- Avoids a permitting agency having to defend a permitting decision multiple times and potentially in multiple forums, and also avoids creating an additional burden for EPA to defend a petition denial that effectively upholds the state's decision.
    - i.e. challenge to minor NSR permit, challenge to title V permit in state court, challenge to EPA's failure to object

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the failure to provide an opportunity for judicial review for parties that would have standing under federal law. 59 Fed. Reg. 62324 (Dec. 5, 1994). Two years later, EPA also proposed to disapprove Virginia's PSD SIP revisions as they limited opportunities for state judicial review of permitting decisions. 61 Fed. Reg. 1880, 1882 (Jan. 24, 1996) (standing and public participation in permitting decisions). Virginia unsuccessfully appealed EPA's final action on the title V permit program to the 4th Circuit, which affirmed EPA's disapproval. *Virginia v. Browner*, 80 F.3d 869 (4th Cir. 1996). The State then amended its statute, and EPA approved the PSD SIP. 63 FR 13795 (March 23, 2014).

Statutory Support for Narrowed NSR Lookback:

- **Structure of title V**
-
    - No indication that Congress intended for title V to alter other parts of the Act.
    - Title V permits were only meant to be a place to collect all of the disparate requirements into one document to assist sources, permitting authorities, EPA, and the public with determining compliance.
    - The current broad reading of our regulations and the statute grants EPA enormous power to review permitting decisions made by states.
        - Congress does not "alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not, one might say, hide elephants in mouseholes." *Whitman v. American Trucking Associations*, 531 US 457, 468 (2001)
            - While the statute and regulations speak to the "requirements of this chapter," "under the Act," or "requirements of the applicable implementation plan," they do not suggest that the derivation of those requirements (whether they are determined for a category of sources or for each source on a case-by-case basis) are subject to reconsideration in the process of crafting a title V permit. The issuance of a source-specific preconstruction permit defines for purposes of title V what the preconstruction requirements of the Act and SIP are for the approved project. Congress already provided oversight authority to EPA under title I to review state and local preconstruction permitting. Congress did not communicate a clear intent to add the ability for states or EPA to reach back years or even decades under title V to reevaluate preconstruction permitting decisions.
        - Review of preconstruction permitting decisions made by permitting authorities under title I in the context of title V upsets the balance the Congress struck between EPA and the states. Congress provided EPA specific tools under title I to oversee preconstruction permits issued under title I. EPA reviews and approves or disapproves the preconstruction permitting program regulations for the state and can issues orders or seek injunctive relief to prevent construction if EPA determines action under that program is not in compliance with major NSR requirements. EPA can also bring enforcement actions in court to seek injunctive relief and seek monetary penalties for noncompliance through judicial and administrative proceedings.
            - Operating in compliance with a title V permit does not necessarily mean that a source is operating in compliance with title I. "Nothing in this subsection [outlining violations of title V] shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification" 42 U.S.C. § 7661a(a).

    - If Congress had intended EPA to exercise more direct oversight of preconstruction permitting decisions under title V, they should have been more explicit instead of relying on overarching language regarding an applicable implementation plan and "this chapter"
        - However, this reading is not necessarily inconsistent with this broad language. For purposes of title V, a final decision has been made as to how "this chapter" and the applicable implementation plan apply to the specific construction/modification. Until that final decision is overturned through state court challenge or a final court order in an enforcement action, for title V purposes it is the requirement of the Act.
        - This scope of Title V review is also consistent with the 60-day limited time frame to review title V permits, which does not provide sufficient time to evaluate NSR applicability or the terms and conditions of NSR permits.
- **Properly Streamlines Title V Permitting**: Title V permitting is supposed to be 'streamlined' and 'reasonable' and this goal may be frustrated if a state re-reviews every preconstruction permitting decision it has already made as part of putting together a title V permit.
    - While many facilities likely don't need to receive that many minor NSR permits, others (e.g., batch pharmaceutical plants) may make modifications on a regular basis.

Policy Support for Narrowed NSR Lookback:

- **Provides Consistent Treatment of Other Requirements**: Provides consistency with how we treat most of the other requirements in title V
    - EPA and states do not review the merits of federal standards established by regulation (e.g. NESHAP, NSPS) when developing a title V permit
        - However, we do review case-by-case determinations made under the federal standards, as well as ensure the title V permit terms and conditions are consistent with all the requirements in the federal standards.
        - Additionally, NESHAP, NSPS, and SIP emission standards must be individually reviewed and approved of by EPA through rulemaking. This means that there are non-discretionary federal level process requirements that are not required for EPA's discretionary review of preconstruction permits under title I.
    - Where EPA has not yet promulgated a FIP, we do not review SIP requirements as part of title V to ensure that the SIP requirements themselves comply with the Act
        - For instance, even though the provisions were subject to a SIP call, we did not object to a title V permit that included SSM exemptions because the SIP provisions were still in place and EPA had not promulgated a FIP. *See e.g.*, *In re Piedmont Green Power*, Order on Petition Number IV-2015-2 (Dec. 13, 2016) at 28-29.
    - Would make our treatment of NSR permits consistent across all jurisdictions. Currently, we do not review the content of preconstruction permits issued by EPA or by authorities that are delegated EPA permitting authority. *See In re Kawaihe Cogeneration Project*, Order on Petition, Permit No. 0001-01-C (Mar. 10, 1997).
        - Basis for currently treating 'federal' permits differently is that they could have been appealed to the EAB
        - It is unclear whether we would apply this deference to 'federal' minor NSR permits (issued by EPA or a delegated agency in Indian Country), but those are likewise appealable to the EAB. 40 CFR § 49.159(d).
- **Provides Certainty/Finality and Conforms to Prior Agency Statements on Staleness**
    - May not be equitable to a source to reopen/revisit permitting decisions already made when they may have made business decisions based on the finality of those permitting decisions
    - Allowing decisions to be reopened is an anathema to the idea that the decision is final. As this petition demonstrates, the current interpretation means that a 20-year old decision isn't truly "final" and could conceivably be upset by EPA (with no immediate opportunity to review our decision).
    - Even when the EPA has conducted NSR Lookback, we have generally tried to carve out old permitting decisions. However, there does not appear to be a legal basis for distinguishing in title V permitting a decision made two years ago and a decision made 20 years ago. This interpretation would generally treat both situations similarly.
- **Prevents Forum Shopping**: Would not allow Petitioners to 'forum shop' to EPA/federal court instead of or in addition to going through the state judicial review process.
- **Streamlines Process and Reduces EPA's Burden**: Digging into these issues slows

down our Title V review process, lengthening the time to review and decide on a petition, making it harder for us to respond on time

- Experience has shown that, while allowing review of NSR issues in title V is an allowable reading of the statute and our regulations, in practice it causes issues with our review and response to title V petitions.

Potential Concerns with 'No NSR Lookback' Interpretation:
The context and language in the other provisions in the Act and regulations can be read to suggest NSR issues must be considered in title V permits.

- Statutory Language
  - 42 U.S.C. §7661d(b)(1), (2) The Administrator's duty to object to a permit from a permitting authority and a petition is based on a demonstration that the "permit is not in compliance with **the requirements of this chapter**, including the requirements of the applicable implementation plan. . ."
  - Reading (42 USC 7661c(a)) in its entirety indicates that title V permits must ensure compliance with the Act
  - "Each permit . . . shall include enforceable emission limitations and standards . . . to assure compliance **with applicable requirements of this chapter,** including the requirements of the applicable implementation plan."
  - 42 U.S.C. § 7661(3): "Schedule of compliance. The term "schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to **compliance with an applicable implementation plan**, emission standard, emission limitation, or emission prohibition"
  - 42 U.S.C. §7661a(a): "Nothing in this subsection shall be construed to alter the applicable requirements **of this chapter** that a permit be obtained before construction or modification"
  - 42 U.S.C. § 7661a(b)(5): Permitting authorities "have adequate authority to . . . issue permits and assure compliance . . . **with each applicable standard, regulation, or requirement under this chapter**."
  - 42 U.S.C. § 7661b(b): The regulations to implement the program shall include a "requirement that the applicant submit with the application a **compliance plan** describing how the source will comply with **all applicable requirements under this chapter**."
  - Several other provisions regarding assuring compliance with requirements "**under this chapter"** (Chapter refers to the Clean Air Act as a whole)
- Regulatory Language:
  - May be inconsistent with the structure of the definition of Applicable Requirements which includes that "any . . . other requirement" of the SIP, which could include major NSR applicability, is an applicable requirement..

- Introductory paragraph "Applicable requirement means **all** of the following as they apply…" If a construction permit is issued (requirement 2), the SIP provisions continue to apply (requirement 1, (1) "**Any** standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter" 40 C.F.R. 70.2)

- None of the statements from the proposed and final rulemakings that may be considered to support a narrower reading of the Part 70 definition of applicable requirements were made in the context of EPA's authority to review state permits and respond to petitions

- There are other potentially contradictory statements:
  - "Thus, while increases in emissions up to title I significance levels would normally escape governmental and public review entirely under the NSR procedures of parts C and D, the same changes to a title V permit **will be reviewed by the State and EPA for compliance with all applicable requirements of the Act**." 57 FR 32250, 32285

- There are many places in both the proposed and final Part 70 rules where EPA made broad statements regarding title V permits such as the following:
  - "the State will be required to issue permits covering **all applicable requirements** of the Act"
  - That a title V permit should provide an opportunity "to determine that the permit faithfully applies **the Act's requirements**"
  - That provisions regarding emissions trading should be read as "consistent with the requirement that title V permits **comply with the applicable requirements of the Act**"
  - In many other places EPA refers to assuring compliance with the "applicable requirements of the Act"
  - A more detailed compilation with citations can be provided by R8 ORC.

Other Concerns: Significant Policy Shift

Narrowed NSR Lookback would represent a significant policy shift (see example of prior statements above in NSR Lookback Background. Challengers may argue the EPA's interpretation is not entitled to deference in part because of this shift (see discussion below on *Auer* deference).

Title V Legislative History

There are statements in the legislative history that could be read to support Narrowed

NSR Lookback, but there are statements that could be read to not support Narrowed NSR Lookback. Legislative history summary in attached appendix. See Appendix for a brief summary of some of the statements in the legislative history.

SIP Implications:

- Could lead to increased scrutiny of minor NSR programs for adequacy of notice and opportunity for judicial review. We currently take the position that we do not need to review state minor NSR programs in depth in infrastructure SIPs. There is not a strong legal basis for this position and it could be challenged. There is wide variability in state SIPs on the opportunity for public notice on minor source permits.
- Would eliminate one EPA tool that may be used to resolve issues where we explicitly deferred in approving and/or responding to adverse comments in the SIP or iSIP process to consider issues and use our oversight.
- Could be implications for current defensive litigation in Region 8.

Other considerations: Highly Controversial Change:

- Given the agency's petition responses and the sheer number of petitions that have raised the NSR issues, we anticipate this new interpretation would be highly controversial.
- Almost certainly will be challenged by Sierra Club in this petition. Likely to be challenged if also applied in at least one of the other petitions currently in the 'pipeline'

Other considerations: Consultation with DOJ:

- In anticipation of a challenge to this petition, does OGC want to consider consultation/defenses with DOJ.

***Auer* Deference Arguments:**
Challengers to the application of Narrowed NSR Lookback interpretation may argue that the interpretation is not entitled to deference because it is a change in policy and does not reflect the fair and considered judgment of the Agency. The following provides potential counter arguments.

The agency can show that the Narrow NSR Lookback interpretation is consistent with the regulation. See, *EEOC v. Abercrombie & Fitch Stores, Inc.*, 731 F.3d 1106 (10th Cir. 2013) (citing *Christopher v. SmithKline Beecham Corp.*, 132 S.Ct. 2156, 2168 (2012))

- This interpretation gives meaning to both relevant sections of the definition of applicable requirement. For purposes of title V permitting, the preconstruction permit defines what the requirements of the SIP are under section (1) and avoids duplicative analysis of the same construction or modification.
  - However, the regulations say "Any standard or other requirement" of the SIP and do not on their face provide for exclusions for the requirement to obtain a major NSR permit prior to construction of a major new source or a major modification of an existing major source. These major preconstruction requirements could be read to still apply even if a minor NSR permit has been issued for the relevant project.

Auer deference can be justified even though this new interpretation conflicts with prior guidance documents, Orders, enforcement actions, etc. *EEOC* 731 F.3d at 1137 (citing *Christopher*, 132 S.Ct. at 2166).

- EPA will have changed its interpretation of how to apply the definition of "applicable requirements" through informal adjudication and policy statements; EPA is not required to go through notice and comment rulemaking to return to our previous interpretation. *Perez v. Mortgage Bankers Association*, 135 S. Ct. 1199 (2015). *Auer* deference is warranted when the interpretation reflects the agency's 'fair and considered judgment.' While EPA is changing its interpretation of regulations, the interpretation reflects a return to the Agency's contemporaneous interpretation and is well supported as a considered and fair interpretation of the interplay between two of the sections of the definition of applicable requirement.
  - However, a court may not consider EPA's action on a single order to be its 'fair and considered judgment.' A rulemaking could more clearly indicate a 'fair and considered judgement' by looking at a broader range of circumstances and information on permit actions and experiences. Even a policy paper may not seem as 'rushed' as the response to a petition.

EPA has applied this interpretation before. *EEOC* 731 F.3d at 1139 (citations omitted).

- EPA applies this level of deference in title V to preconstruction permits issued under federal regulations (EPA or delegated states)
- Our contemporaneous statements indicate that this is what we had in mind when we finalized Part 70.
  - However, we have stated or applied a contrary interpretation for 20 years.

- There is no need to safeguard the principle of providing "adequate notice" and "fair

warning" about our new interpretation because the text of the rule itself provides notice that the interpretation is contained in the rule. *EEOC*, 731 F.3d at 1137(citing *Christopher* 132 S.Ct. at 2167). While a change in interpretation may raise questions regarding "unfair surprise," this change in interpretation is a return to our previous interpretation, is well supported, and does not impose liability on regulated entities for past actions taken in good faith. *See Christopher*, 132 S. C.t. at 2167.

MEMORANDUM

From: Teresa Dykes
Attorney, Air Enforcement Division
Office of Civil Enforcement

Thru: Apple Chapman
Deputy Director, Air Enforcement Division
Office of Civil Enforcement

To: Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance

Date: August 3, 2017

Question: Will the new interpretation of "applicable requirements" under consideration by OAQPS in response to the PacifiCorp Hunter Title V petition constrain EPA's authority to enforce the CAA?

Answer: **Probably.**

Background: OAQPS is currently preparing a response to a petition in which the Sierra Club seeks EPA's objection to renewal of the Title V permit issued to the PacifiCorp Hunter Power Plant located in Emery County, Utah. The Utah Department of Air Quality (UDAQ) issued the original Title V permit 1998. The 2016 permit addressed in the petition is the first renewal of this permit and was issued by UDAQ only after Sierra Club filed a mandamus action in state court. This coal-fired power plant is comprised of three units with a total capacity of 1320 MW.

One of the issues raised in the Sierra Club's petition is the facility's compliance with the CAA's major source New Source Review (NSR), specifically the Prevention of Significant Deterioration (PSD) requirements. Sierra Club alleges that the UDAQ improperly granted the facility a synthetic minor source permit for certain activities based on erroneous assumptions regarding baseline actual emissions due to the use of erroneous emission factors. According to Sierra Club, the Hunter facility should have been subject to PSD requirements and, therefore, the Title V permit, which only incorporates those limitations and standards from the synthetic minor source permit, does not ensure compliance with all the applicable requirements in Utah's SIP, specifically the PSD requirements.

Title V Petition Process: Subchapter V (also called Title V) of the CAA requires sources to obtain what is commonly known as a Title V permit. *See* 42 U.S.C. §§ 7661-7661f. Each Title V

permit must include enforceable emission limitations and standards, a schedule of compliance, a requirement to report monitoring results no less frequently than semi-annually, and "such other conditions as are necessary to assure compliance with ***applicable requirements*** of this chapter, including the requirements of the applicable implementation plan." 42 U.S.C. § 7661c(a) (emphasis added). Title V does not have a definition of "applicable requirements." Therefore, EPA promulgated a definition that includes, *inter alia*,

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title 1 of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter; and
(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including Parts C or D, of the Act.

40 C.F.R. § 70.2(a). The regulations implementing Title V also require the permit to contain emission limits and standards, including those operational requirements and limitations that assure compliance with all "applicable requirements" at the time of the permit issuance. 40 C.F.R. § 70.6(a). The permit authority must also determine whether the facility will be in compliance with "respect to all applicable requirements" at the time of permit issuance, and if not, include a compliance schedule that sets forth enforceable steps leading to compliance with the applicable requirements. *See* 40 C.F.R. § 70.6(c)(3) (requiring a compliance schedule in the issued permit).

When the permitting authority issues a Title V permit, the statute provides that EPA "shall object" to the permit if it determines that the permit is not in compliance with the "applicable requirements" of the CAA. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c). However, if the EPA does not object on its own, "any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period [] to take such action." 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). The Administrator must grant or deny a petition to object within 60 days of its filing. *Id.* The Administrator "shall issue an objection" within the 60-day period if the petitioner demonstrates that the permit is not in compliance with the requirements of the CAA, including requirements of the applicable implementation plan." *Id.*

OAQPS's Proposed Re-Interpretation of "Applicable Requirements" in 40 C.F.R. § 70.2: To address Sierra Club's petition, OAQPS wants to change its long-standing interpretation of the definition of "applicable requirements" in 40 C.F.R. § 70.2. Historically, EPA has interpreted "any standard or other requirement provided for in the applicable implementation plan" in section (1) of the definition to include preconstruction permitting applicability, so that applicability decisions regarding New Source Review in Title I of the CAA were reviewable under Title V as well issues identified in a PSD or Nonattainment NSR major source or major modification permit. *See e.g., In the matter of Roosevelt Landfill* at 8 (May 4, 1999) ("The merits of minor NSR issues . . . can be ripe for considering in a timely petition to object under title V.

See Order In re Shintech Inc., at 3 n.2 (Sept 10, 1997)").[8] In its guidance documents, EPA has stated that

> Where EPA believes that an emission unit has not gone through proper preconstruction permitting process (and therefore one or more applicable requirements are not incorporated in the draft or proposed title V permit), EPA may object to the title V permit.

Letter from John S. Seitz, Director, Office of Air Quality Planning and Standards, U.S. EPA to Mr. Hodanbosi and Mr. Lagges, STAPPA/ALAPCO, Enclosure A (May 20, 1999) (Hodanbosi Letter). EPA also stated that

> Where a region is unable to obtain adequate information during its review period to support an objection, the permit may be issued with "placeholder" language stating that the permit shield does not attach to the emission units at issue. In such instances, the permitting office should also consider a referral to the enforcement office for further investigation.

Id. The courts have also found that EPA can consider questions of NSR applicability in the Title V petition process. *See e.g.*, *United States v. Ameren Mo.*, 2016 U.S. Dist. LEXIS 22323 (Feb. 24, 2016) (Ameren 2016).

In denying the Sierra Club's claim that PSD applies to the Hunter facility, OAQPS proposes that EPA would state that it is changing its interpretation of "applicable requirement" in the Title V regulations to no longer include review of NSR applicability decisions or the content of a PSD or Nonattainment NSR permit when a state (or other permitting authority) has issued a permit and that permit had a public comment period and was subject to judicial review in state court. EPA will conclude that the state's permitting action defines the applicability under the state implementation plan (SIP) with relationship to the preconstruction activities covered under the permit. In other words, these permits interpret how preconstruction requirements under the SIP "apply" to the source and satisfy the requirements of both sections (1) and (2) of the definition of applicable requirements.[9] This interpretation of "applicable requirement" is inconsistent with the way the agency has heretofore interpreted these provisions and creates a permit shield as to those requirements.

OGC believes it can argue that this new interpretation is more consistent with the legislative history statements that Title V is not intended to impose new requirements, rather it is a process to consolidate existing air pollution requirements into a single document. OGC also believes that certain provisions of Title V support the interpretation that EPA will no longer reevaluate previous Title I permitting decisions in the Title V petition process. For instance, Title V

[8] However, EPA has treated EPA issued permits or permits issued by a permitting authority that has received delegation to implement EPA's PSD rules as conclusive and final determinations of the applicable preconstruction requirements. *See In re Kawaihe Cogeneration Project*, Order on Petition, Permit No. 0001-01-C (Mar. 10, 1997).
[9] This interpretation applies where a permitting agency has included the SIP's preconstruction requirements within a preconstruction permit subject to public notice and comment and subject to judicial review. EPA is not considering at this time whether other circumstances may warrant a different approach.

requires state programs to have "[a]dequate, streamlined, and reasonable procedures . . . for expeditious review of permit actions . . ." 42 U.S.C. § 7661a(b)(6). According to OGC, requiring a permitting agency to go back and review final permitting decisions that have already been subject to safeguards like public notice and judicial review could frustrate the goal of "expeditious review of permit action" required by the Act.

Authority to Enforce Title V Permits Requirements:

The statute delegates broad authority to EPA to enforce any violation of the CAA, including violations of Title I and Title V either through enforcement actions under Section 113 or by objecting to a state-issued Title V permit as discussed above. Section 113 of the CAA grants EPA the authority to commence a civil action for injunctive relief and penalties for violation of "any requirement or prohibition of an applicable implementation plan or permit." 42 U.S.C. § 7413(b)(1). EPA's enforcement authority also extends to *inter alia* any violation of any requirement or prohibition of Title I (which includes the NSR requirements) and of Title V. 42 U.S.C. § 7413(b)(2). EPA has consistently argued that its enforcement authority allows it to not only address violations of the terms contained in issued Title V permits, but also the failure to secure and maintain Title V permits containing all of the required provisions in Title I and the applicable SIP.

There is a limited exception to this broad enforcement authority – the Permit Shield. The CAA provides that sources that have obtained a Title V permit and are operating in compliance with that permit shall be deemed in compliance with other "applicable provisions of this chapter" (*i.e.*, the CAA) that relate to the permittee if –

> (1) the permit includes the applicable requirements of such provisions, or
> (2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

42 U.S.C. § 7661b(f).

Effect of the New Interpretation of Applicable Requirement on Enforcement

1. The New Interpretation Is Inconsistent with the Case Law Interpreting "Applicable Requirements" and the Enforcement Cases Filed where EPA alleged that Title V Violations Are Actionable Separately from NSR Violations.

By definition, applicable requirements include requirements under the New Source Review program. *See United States v. Ameren Mo.*, (Jan. 23, 2017) (Ameren 2017), pg. 156; *see also* Ameren 2016. In the enforcement cases where EPA has alleged a failure to comply with PSD or Non-Attainment NSR, EPA has also alleged that the sources are operating under a deficient Title V that does not comply with 40 C.F.R. §§ 70.5-70.6 because the permit does not include the applicable PSD/NSR requirements.

Courts have agreed that a Title V violation is actionable separately from a NSR violation. *Id.*, *See also United States v. Louisiana Generating Co., 938 F. Supp. 2d 615* (M.D. La. 2011) (the CAA imposes an ongoing obligation on owners/operators to complete operating permit applications, *e.g.*, if past actions triggered PSD requirements, then the owner/operator has a duty to put such requirements in the Title V permit); *U.S. v. E. Ky. Power Coop., Inc.*, 498 F. Supp. 2d 1010, 1016 (E.D. Ky. 2007) (broadly rejecting defendant's challenges to Title V claims "in light of the very broad authority granted to the EPA in the actual language of the CAA itself"); *U.S. v. Murphy Oil USA, Inc.*, 143 F. Supp. 2d 1054, 1095 (W.D. Wis. 2001) (EPA's enforcement discretion is not limited to administratively modifying an inaccurate permit that does not include all applicable requirements); *United States v. S. Ind. Gas and Elec. Co.*, 2002 WL 1760752 *2 (S.D. Ind. July 26, 2002) (implicit in the court's recognition that there could be a violation of the operating permit is the recognition that the major source requirements are applicable requirements).

The cases where the courts have found that Title V violations are not separately actionable under the CAA are not instructive. The court decision in *United States v. EME Homer City Generation L.P.*, 727 F.3d 274 (3d Cir. 2013), cannot be squared with the plain language of the Clean Air Act. In rejecting the United States' Title V claims, the court in *Homer City* based its holding on the incorrect premise that EPA inaction- in the form of EPA not objecting to a proposed Title V permit provided to EPA for review- is somehow a "final action" of the Agency subject to direct review by the Courts of Appeal under CAA Section 307(b)(1), 42 U.S.C. § 7607(b)(1). The court found it did not have jurisdiction to hear the claims under the provisions in CAA Section 307(b)(2), 42 U.S.C. § 7607(b)(2), which precludes a district court from hearing claims in a civil enforcement hearing that could have been reviewed by the Court of Appeals under Section 307(b)(1). However, in addition to the nonsensical premise that the Administrator would review his or her own action, there was no action of the Administrator to even review, and by its plain terms, the provision provides for review only of final agency "action," not agency inaction. *See Ameren 2016* at pg. 26.

The court in *Sierra Club v. Otter Tail Power Co.*, 615 F.3d 1008 (8th Cir. 2010), held that the citizen plaintiffs in that case could only seek to enforce alleged New Source Performance Standards violations by petitioning EPA to object to Otter Tail's Title V permit, and then seeking judicial review of a decision by EPA not to object under CAA Section 307, 42 U.S.C. § 7607. The court found that the citizen plaintiff's case, brought under the citizen suit provisions of CAA Section 304, 42 U.S.C. § 7604, was foreclosed by the jurisdictional bar in Section 307(b)(2). *Otter Tail*, 615 F.3d at 1023. However, the court clarified its holding, explaining that "the considerations underlying our decision would not necessarily be present . . . in EPA enforcement actions[.]" *Id.* citing *Citizens Against Ruining the Env't v. EPA*, 535 F.3d 670, 678-79 (7th Cir. 2008).

2. EPA's New Interpretation May Limit Enforcement's Ability to Address Violations of Law or Plain Errors that were Not Caught by State Permit Writers

The Permit Shield provisions in Section 504 of the CAA, 42 U.S.C. § 7661b(f), are intended to

protect sources from liability for operating under a permit issued in accordance with Title V procedures. In the regulations implementing the statutory provision, EPA provides that a permitting authority must include an explicit non-applicability determination in the Title V permit or include a summary of the determination in the permit in order to protect the company from liability. 40 C.F.R. § 70.6(f)(1). Where a source has obtained a minor source or minor modification permit, the regulations provide that nothing in the Title V regulations can affect the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of the permit issuance. 40 C.F.R. § 70.6(f)(3)(ii).

The new interpretation of applicable requirement may equate to an affirmative finding that specific changes did not trigger PSD or Nonattainment NSR. EPA has argued and courts have held that the Permit Shield cannot apply to a source without an affirmative finding in the Title V permits themselves that the specific changes did not trigger NSR. *United States. v. E. Ky. Power Coop., Inc.*, 498 F. Supp. 2d 1010, 1015 (E.D. Ky. 2007) (PSD non-applicability must be explicit in the Title V to get the shield). Most of EPA's enforcement cases have not involved the situation in the Hunter Petition- *i.e.*, the source had a synthetic minor modification construction permit issue by the permitting authority under an approved SIP.[10] EPA has stated, however, that even in situations where a source did get a minor source or minor modification construction permit, that does not equate to a Permit Shield for major source or major modification requirements because a source cannot avoid liability for major source or major modification "applicable requirements" that applied prior to or at the time of permit issuance. *See* 40 C.F.R. § 70.6(f)(3). Hodanbosi Letter at pg. 3 (citing *White Paper for Streamlined Development of Part 70 Permit Applications*, Office of Air Quality Planning and Standards, EPA (July 10, 1995) at pg. 24). *See also United States v. S. Ind. Gas & Elec. Co.*, No. IP99-1692-CM/F, 2002 WL 1760699, at pp. 3-5 (S.D. Ind. July 26, 2002) (EPA may enforce its interpretation of PSD rules over contrary state determination); *United States v. Ford Motor Co.,* 736 F. Supp. 1539, 1550 (W.D. Mo. 1990) (CAA's independent federal enforcement authority enables EPA to bring an enforcement action even where a state concludes that a source is in compliance with the SIP).[11]

If EPA equates the issuance of a minor source or minor modification construction permit to a definitive determination that major source or major modification requirements are not "applicable requirements," these permits may effectively provide the source with a Permit Shield.[12]

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[10] In recent enforcement cases (since implementation of Title V) where EPA has brought claims for PSD or NNSR and the source has had a minor source permit, these cases have settled. The existence of a permit issued by the state was weighted heavily when considering litigation risk.

[11] Prior to the 1990 Amendments to the CAA, a permit that was valid on its face may have precluded EPA enforcement. *See United States v. AM Gen. Corp.* 34 F.3d 472 (7th Cir. 1994); *United States v. Solar Turbines* 732 F. Supp. 535 (M.D. Pa. 1989). These cases, however, were decided before Congress expanded EPA's enforcement authority in existing Sec. 113 and in the new Title V.

[12] In cases where the courts have addressed the issue of whether a state-issued minor source permit based on a determination that a major source permit is not required precludes federal jurisdiction, courts have said no. But these cases did not involve a Title V permit shield or a state operating permit shield. *E.g., Weiler v. Chatham Forest Products, Inc.*, 392 F. 3d 532, 537-539 (2nd Cir. 2004); *Citizens for Pennsylvania's Future v. Ultra Resources*, 898 F. Supp. 2d 741, 746 (M.D. Pa, 2012).

It is not practicable to expect EPA to find and address major source or major modification applicability when a state issues a minor source or minor modification permit. While EPA receives copies of major source or major modification permits, there is no requirement for EPA to receive notice of minor source or minor modification permits. Even if EPA received these permits, the burden of reviewing them would be untenable.

Interestingly, Title V, Subsection § 501(a), Violations, provides that

> After the effective date of any permit program approved or promulgated under this subchapter, it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate [any source required to have a permit] except in compliance with a permit issued by a permitting authority issued under this subchapter. (**Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification**).

42 U.S.C. § 7661a(a) (emphasis added). This is interesting because the few cases that have addressed NSR and Title V applicability (*infra*) have not discussed this provision of the statute. OGC thinks that this provision indicates that operating in compliance with a Title V permit does not equate to being in compliance with Title I. This provision could be used to stress in the new interpretation that a source would not be shielded from major source or major modification applicability through the state's issuance of a minor source or minor modification permit.

3. The New Interpretation May Have Precluded Certain Past Enforcement Efforts and Will Likely Affect Enforcement Going Forward.

Under the new interpretation, several of EPA's past settlements under the NSR initiative would likely not have occurred. For example, EPA recently settled a case against Rocky Mountain Bottle Company (RMBC) (lodged on June 26, 2017). The settlement addresses violations of Nonattainment NSR, PSD, and Title V requirements at RMBC's container glass plant in Wheat Ridge, Colorado. EPA alleged that RMBC failed to obtain a NNSR permit for NOx and SO_2, and a PSD permit for SO_2 prior to constructing its 1995 – 1999 furnace expansion project (FEP), which resulted in a significant net emissions increase of both pollutants. RMBC applied for and received a synthetic minor permit from Colorado (who was a co-plaintiff in this case).

Regarding NOx emissions, EPA claimed that RMBC used an elevated baseline when applying for the synthetic minor permit. Had RMBC used the correct baseline, it would have been required to get a Nonattainment NSR permit for NOx for the project. Regarding SO_2, EPA claimed that RMBC failed to net out of its SO_2 emissions increase because the credits it used to net out were accrued outside of the 5-year contemporaneous period of the project.

During settlement negotiations, RMBC argued it was shielded from major NSR requirements because it was operating in compliance with its synthetic minor permit and those requirements were included in its Title V permit. EPA took the position that compliance with an incorrectly issued synthetic minor NSR permit did not shield the company from having to obtain a major NSR permit. Under the new interpretation, EPA may not have been able to allege a violation in the RMBC case and would not have secured a settlement.

Likewise, under the new interpretation, EPA may be foreclosed from pursuing any new cases where a permitting authority improperly issued a minor source permit that EPA later determines should have been a major source NSR permit. The RMBC case is not unique. AED surveyed the regions on Thursday, August 3 and was informed that many of the earlier settlements under the NSR initiative involved modification projects that were improperly permitted under the applicable SIP.

4. The New Interpretation Impact Ongoing Cases

At this time, AED does not believe that the new interpretation will impact on-going cases.

Draft Language to Help Limit Enforcement Concerns

The EPA may be able to limit the enforcement concerns identified by OECA by including language in the order such as that below that specifically explains the following: (1) how the permit shield works; and (2) that the EPA should receive deference in its interpretation of the SIP, even when that differs from the state's interpretation. While the basic legal theory supports narrowing EPA's review of NSR concerns in title V permits, the interpretation is not intended to affect any of EPA's permitting enforcement and oversight authorities under title I or EPA's prior understanding of the Title V permit shield provision. Consistent with this understanding, the title V permit should only provide a shield from major NSR applicability when a minor NSR permit was issued if, and only if, an affirmative non-applicability determination was made by the state permitting authority in acting on the title V application (the issuance of a minor NSR permit, by itself is not such a non-applicability determination for title V permit shield purposes). For the shield to apply, any NSR non-applicability determination must be considered as part of the title V permit and would then be reviewable by the EPA under its title V oversight authorities.

Potentially remaining Enforcement Concerns:

- Despite including such language, there still would be some risk that courts will not follow the EPA's interpretation of how the permit shield works or that EPA should receive deference of contrary state interpretations. There would be a risk that courts will find that the inclusion of a minor NSR permit in a title V permit without review of whether it is the appropriate permit to provide a shield from enforcement. These courts may use language from the Narrowed NSR Lookback analysis to conclude that an enforcement action would be an improper collateral attack on the permitting decision.
- Section 113 violations are framed in terms of "requirement or prohibition of an applicable implementation plan . . . ." 42 U.S.C. §7413(a)(1). Defendants, when issued a minor NSR permit in an enforcement case alleging violations of major NSR, may argue that under our interpretation of title V, the state has defined the applicable "requirement" and therefore there is no violation. They could argue that our interpretation should apply with equal weight in both title V and title I. While this is a possibility, and a risk, EPA can argue that, first, these are two separate terms, "requirement" v. "applicable requirement." Even if you focus only on the term "requirement," the Supreme Court has confirmed that terms can be interpreting differently in different contexts. See *Envtl Def. v. Duke Energy Corp.*, 549 U.S. 561 (2007). In this case, the enforcement authority under title I and permitting under title V serve different purposes and call for a different interpretation of what the requirements of the applicable implementation plan are. Title I enforcement authority is explicitly about providing oversight and enforcement in the case of violations of the Act. Title V focuses on brining everything together into one place to streamline consideration of enforcement actions. Many of the considerations outlined above support the differential treatment of what is the "requirement" under these two different titles of the Act.

Draft language for the Order:

This interpretation of title V does not implicate the ability for the EPA to bring an enforcement action under section 113 alleging violation of major NSR (PSD or Nonattainment NSR) where, as here, a permitting agency has issued a minor NSR permit. The EPA's view that reevaluation of NSR permits is not appropriate in the context of a title V permit does not diminish the opportunities to review construction permitting decisions under title I of the Clean Air Act or through a citizen enforcement action. The EPA can continue to reevaluate and disagree with state permitting decisions through enforcement actions. *See e.g.*, *U.S. v. S. Ind. Gas & Elec. Co.*, No. IP99-1692-CM/F, 2002 WL 1760699, at *3-5 (S.D. Ind. July 26, 2002); *United States v. Ford Motor Co.*, 736 F. Supp. 1539, 1550 (W.D. Mo. 1990). This is consistent with our view of the role of title V of the Act. EPA believes that Congress intended the in-depth oversight of case specific state title I permitting decisions to be handled under title I, such as through the state appeal process, an action under Section 113, or an order under Section 167. As described in this Order, for purposes of title V, the permitting agency should simply incorporate the terms and conditions of preconstruction permits, unless and until those permits are corrected, overturned, or voided through one of these title I mechanisms. Similarly, broader programmatic issues should be handled under the EPA's existing title I authorities instead of through case-by-case objections under title V. That the EPA views the incorporation of the terms and conditions of these construction permits into the title V operating permit as proper for purposes of title V does not indicate that the EPA agrees that the state reached the proper decision. For instance, even when the EPA has made a determination that a provision of the SIP is not in compliance with the Act, the EPA will not object to a permit that includes that provision until there is final action to remove it from the SIP. *See In re Piedmont Green Power*, Order on Petition Number IV-2015-2 (Dec. 13, 2016) at 28-29; see also *infra* XX [SIP-call discussion]. Similarly, even though EPA might disagree with the permitting decisions made by the permitting agency regarding construction, for purposes of the title V operating permit, the terms of the construction permit should be incorporated into the title V operating permit until such time that there is a final action to correct any alleged errors in the construction permit, such as a court order in a state court appeal or through an enforcement action alleging that a source failed to obtain the proper permit.

Similarly, the EPA does not view this return to the contemporaneous interpretation of the Agency's part 70 regulations regarding petitions to object to proposed operating permits as changing our interpretation or enlarging the scope of a permit shield under 42 U.S.C. § 7661c(f). A permit shield, if included in the title V permit, would generally not provide a sufficient defense from enforcement actions that allege a major NSR permit is required when the facility only received a minor NSR permit. There are two types of 'permit shields' under title V. The first, default 'permit shield' states that compliance with the title V permit "shall be deemed compliance with" title V. 42 U.S.C. § 7661c(f). A permitting agency may go farther to provide a more expansive permit shield. Under the first prong of this expanded permit shield, the permitting agency can provide that compliance with the title V permit "shall be deemed compliance with other [non-title V] applicable provisions" if "the permit includes the applicable requirements of such provision." *Id.* Otherwise, the permitting agency can provide a shield from requirements that are not considered applicable if it "in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise

summary thereof." *Id.* While we interpret the issuance of a final minor NSR permit to define the applicable requirements for the construction or modification covered by the minor NSR permit *for purposes of a title V permit*, the first prong of the more expansive title V permit shield would only allow that compliance with the permit to be deemed compliance with those minor NSR requirements, not compliance with any major NSR requirements that were improperly avoided. However, if the permitting authority, "in acting on the permit application," makes a determination that major NSR requirements "are not applicable," to that construction or modification under the second prong of the more expansive permit shield provision, that could provide a proper title V permit shield. In such a case, the non-applicability determination would be part of the title V permit action and subject to judicial review under §7661a(b)(6).

Appendix of Partial List of Orders Granting Petitions Involving NSR Lookback

Previous Title V Order Granting on NSR Lookback Issues (Partial List)
PSD applicability grants:

- Seneca 6/29/15 at 13-17 (common control, record grant)
- San Juan 2/15/12 at 9-11 (state did not address PSD after admitting it applied)
- Murphy Oil 9/21/11 at 6-11 (applied unapproved state rules to determine PSD did not apply)
- Sims Mesa 7/29/11 at 4-9 (common control, record grant)
- BP Whiting 10/16/09 at 4-11, 19-20 (record grant on 4-11; merit grant and direction to redo netting analysis on 19-20)
- WPL Columbia 10/8/09 at 6-12 (merit grant on significant net emission increase)
- Frederick II 10/8/09 at 4-8 (merit grant on single source determination)
- TVA Paradise I 7/13/09 at 5-6 (record grant on significant net emission increase)
- CEMEX 4/20/09 at 7-10 (record grant)
- Frederick I 2/8/08 at 3-5 (record grant)
- Onyx 2/1/06 at 8 (record grant)
- Midwest Joliet I 6/24/05 at 33-34 (record grant)
- Midwest Romeoville 6/24/05 at 32-33 (record grant)
- Midwest Fisk 3/25/05 at 5-6 (record grant)
- Midwest Crawford 3/25/05 at 5-6 (record grant)
- ConEd Hudson Ave 9/30/03 at 7-8 (inadequate RTC, not much discussion)
- Georgia Pacific 5/9/03 at 19-22 (record didn't demonstrate validity of netting credits relied upon to avoid NNSR applicability; actually confronted collateral attack argument)

BACT-related grants:

- Pirkey 2/3/16 at 5-12 (grant on SSM exemption)
- Nucor III 1/30/14 at 64-69 (grant on lack of PM2.5 analysis)
- Cash Creek II 6/22/12 at 7-11 (record grant)
- AEP Turk 12/15/09 at 5-12 (grant for not explaining why BACT did not consider all available control technology)
- Cash Creek I 12/15/09 at 7-10, 12-14, 19 (grant for not explaining why BACT did not consider all available control technology)
- EKPC Spurlock III 11/30/09 at 8-10 (record grant)
- LGE Trimble II 8/12/09 at 29-31, 42-46 (grant for not explaining why BACT did not consider all available control technology)
- LGE Trimble I 9/10/08 at 9-11 (grant on SSM exemption)
- EKPC Spurlock I 8/30/07 at 29-32 (grant for not explaining why BACT did not consider all available control technology)
- Chevron (CBE) 3/15/05 at 11-13 (record grant)
- Maimonides 12/16/02 at 20-21 (grant for not specifying what BACT was selected)

Modeling, etc:

- Rocky Mtn Steel 5/31/12 at 12-22 (grant for improper use of SILs)
- Nucor I 3/23/12 at 11-14 (grant for single source determination)

Appendix of Summary of Title V Legislative History

There are statements in the legislative history that could be read to support either Option. (detailed compilation prepared by and available from R8ORC).

Senate debate and report

- The permit document would serve the useful function of reciting in one place all the duties imposed by the CAA, integrating and consolidating all the requirements, it is a comprehensive statement
- Permits must contain all source's pollution obligations under the existing SIP and other CAA requirements
- Plant managers would be better able to understand and follow the CAA requirements
- Compliance plans would not need to address compliance with existing CAA requirements, unless the source is in violation
- Recognized that the CAA prior to 1990 only required compliance with the SIPs
- The leadership package would require EPA to object to any permit that would allow a violation of the Act
- EPA's veto authority assures permits meet statutory requirements

House debate and report

- EPA may object to permits if they fail to meet any CAA requirement
- Permit is intended to be the single document of all the requirements under the Act applicable to the source
- The permit is the document that everyone should look to know what a permittee should do to comply with the CAA
- EPA should use veto power sparingly

Conference Report and Statements

- Title V permit provisions would ensure compliance with all applicable requirements of the CAA
- State can't establish permitting requirements that are inconsistent with the national permitting requirements of this Act
- Provides EPA with authority to object to permits that violate the Act
- State title V permit programs should augment their existing programs, as necessary, to be consistent with this Act
- EPA should tolerate differences where there are not national implications
- Administrator use authority if unambiguous violation of the Act and there is a likelihood of significant harm to human health or the environment

Senate Debate on Conference Report

- Administrator is required to object to permit that violates the Act
- Permit conditions assure compliance with the applicable requirements of the Act
- Objection by EPA if permit contains provisions that are not in compliance with the Act
- EPA has enforcement authority for both free-standing SIP requirements and those set force in permits

- State's response to EPA objection do not need to incorporate the exact language EPA suggests, as long as the modification adequately meets the substance of EPA's objections and such revisions are necessary to meet the requirements of the Act
- EPA should allow for flexibility for special conditions in each state *** (support for Options 1 and 2)

To: Keller, Peter[keller.peter@epa.gov]
Cc: Spangler, Matthew[Spangler.Matthew@epa.gov]
From: McDonald, Janet
Sent: Tue 8/29/2017 2:59:15 PM
Subject: FW: Current Version of OGC's Briefing Materials
Hunter DGC Briefing paper_082817.docx

Hi, Peter-

I just talked to OGC about tomorrow's briefing, which is proceeding.

Matt and I are going to look at OGC's document. They have asked for any comments from us. It will be used to brief Justin ahead of tomorrow's meeting.

Can you give me a call?

The number you have on your door does not appear to be working.

From: Krallman, John
Sent: Monday, August 28, 2017 4:52 PM
To: Chapman, Apple <Chapman.Apple@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>
Cc: Dykes, Teresa <Dykes.Teresa@epa.gov>; McDonald, Janet <McDonald.Janet@epa.gov>; Keller, Peter <keller.peter@epa.gov>; Spangler, Matthew <Spangler.Matthew@epa.gov>; Laumann, Sara <Laumann.Sara@epa.gov>
Subject: Current Version of OGC's Briefing Materials

All,

Here is the current version of OGC's briefing materials for Justin that we are sending to ARLO management for review. You can provide feedback or input, or use or adapt these materials for your own briefings.

John

John T. Krallman

Attorney-Advisor

U.S. Environmental Protection Agency

Office of General Counsel (MC2344A)

1200 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

(202) 564-0904

To: Svendsgaard, Dave[Svendsgaard.Dave@epa.gov]; Keller, Peter[keller.peter@epa.gov]; Wheeler, Carrie[Wheeler.Carrie@epa.gov]; Buckler, Charles[Buckler.Charles@epa.gov]; Bridgers, George[Bridgers.George@epa.gov]; Deroeck, Dan[Deroeck.Dan@epa.gov]
Cc: Kornylak, Vera S.[Kornylak.Vera@epa.gov]; Rao, Raj[Rao.Raj@epa.gov]; Vetter, Cheryl[Vetter.Cheryl@epa.gov]; Fox, Tyler[Fox.Tyler@epa.gov]
From: Montanez, Jessica
Sent: Tue 5/2/2017 6:36:12 PM
Subject: Dept of Commerce Federal Register Notice Comment Summary
AirPermittingCommentsSummaryfrom_DOC-FRNotice_05022017.docx

Team,

Thanks a lot for your help in summarizing the Department of Commerce Federal Register Notice comments. Here is a summary of the comments received. The word file summarizes the 825 entries that we gathered in the excel spreadsheet.

Ex. 5 - Deliberative Process

The NSR comments are classified into the following topic areas, with most of the comments related to streamlining the general NSR permitting process (54 commenters).

1. General Permitting Process (timeliness, deadlines, streamlining)
2. NSR Applicability (thresholds, aggregation, project netting, etc.)
3. PALs
4. Control Technology Review (BACT/LAER)
5. Other NSR Requirements (E.g., PSD – GHG SER , NNSR – Offsets, Both – PM2.5 SER)
6. Modeling
7. NSR Implementation (Interaction between NSR and NAAQS Implementation)
8. Enforcement
9. Other Comments (Emission Factors, Testing, Public Notice)

The categories are different than the ones we had talked about before because they are based on the topics that we got the most comments on, not necessarily on all the areas we regulate.

The summary could still use some editing as there are some comments that could still be grouped further, but we will not do those edits for now. I would appreciate if you let me know about any typos, missed counts or any other errors.

I think the current plan is to brief management on what the commenters said and then create a list of the comments that we think we could do something about if we were asked to do so. I am sure we will hear from our management on further instructions.

Thanks again and let me know if you have any questions,

Jessica

Jessica Montañez
Office of Air Quality Planning and Standards
Air Quality Policy Division
New Source Review Group
109 TW Alexander Drive MD: C504-03 RTP, NC 27711
Phone: 919-541-3407, Fax: 919-541-5509

From: Svendsgaard, Dave
Sent: Thursday, April 06, 2017 11:40 AM
To: Keller, Peter <keller.peter@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>; Fox, Tyler <Fox.Tyler@epa.gov>; Wheeler, Carrie <Wheeler.Carrie@epa.gov>; Buckler, Charles <Buckler.Charles@epa.gov>; Montanez, Jessica <Montanez.Jessica@epa.gov>; Bridgers, George <Bridgers.George@epa.gov>; Deroeck, Dan <Deroeck.Dan@epa.gov>

Cc: Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Rao, Raj <Rao.Raj@epa.gov>
Subject: Dept of Commerce cmts - ASSIGNMENTS

All,

Here are the assignments for reviewing the 170 docket entries:

#0002 – 15 Cheryl

#0016 – 30 Tyler

#0031 – 50 George

#0051 – 70 Carrie

#0071 – 90 Peter

#0091 – 110 Chuck

#0111 – 130 Dan

#0131 – 150 Jessica

#0151 – 171 Dave

The Docket ID is DOC-2017-0001, and the link is
https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=DC
2017-0001

Keep in mind that not all docket entries are letters, and some letters may contain no air permitting related comments.

Ex. 5 - Deliberative Process

Dave

David J. Svendsgaard

U.S. Environmental Protection Agency
OAQPS/AQPD/NSRG (C504-03)
109 T.W. Alexander Drive

Research Triangle Park, NC 27711
Phone (919) 541-2380 Fax (919) 541-5509

From: Kornylak, Vera S.
Sent: Thursday, April 06, 2017 10:13 AM
To: Rao, Raj <Rao.Raj@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>; Fox, Tyler <Fox.Tyler@epa.gov>
Cc: Svendsgaard, Dave <Svendsgaard.Dave@epa.gov>; Montanez, Jessica <Montanez.Jessica@epa.gov>; Keller, Peter <keller.peter@epa.gov>; Bridgers, George <Bridgers.George@epa.gov>
Subject: Dept of Commerce cmts
Importance: High

Hi Everyone:

Let me know if the excel spreadsheet links work from this doc, which I pulled off sharepoint.

Vera

Vera Kornylak || Senior Policy Advisor

Air Quality Policy Division || OAQPS

919-541-4067 || kornylak.vera@epa.gov

To: Rao, Raj[Rao.Raj@epa.gov]; Keller, Peter[keller.peter@epa.gov]
Cc: Argentieri, Sabrina[argentieri.sabrina@epa.gov]; Doster, Brian[Doster.Brian@epa.gov]
From: Williams, Melina
Sent: Wed 11/15/2017 5:08:20 PM
Subject: DTE's Reply Brief
Final_DTEcertReply_111517-c.pdf
No. 17-170 Hunton Williams Signed Filing Docs.pdf

Just fyi, here's the reply brief that DTE filed in the Supreme Court today. I haven't had a chance to read it yet, but wanted to let you know we'd received it.

Melina Williams | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

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Subject: No. 17-170 Reply Brief

The attached Reply Brief No. 17-170 has been HAND FILED today at the Supreme Court on November 15, 2017. Service parties will receive hard copy service per rule 29.5.

No. 17-170

IN THE

Supreme Court of the United States

DTE ENERGY COMPANY AND
DETROIT EDISON COMPANY,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that on November 15, 2017, three (3) copies of the REPLY B
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My commission expires July 31, 2018.

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November 15, 2017

CORPORATE DISCLOSURE STATEMENT

Petitioner DTE Energy Company has no parent corporation and no corporation owns 10% or more of its stock. Petitioner Detroit Edison Company, now known as DTE Electric Company, is a wholly owned subsidiary of DTE Energy Company.

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INTRODUCTION

The Environmental Protection Agency's (EPA) regulations implementing the statutory New Source Review (NSR) program state that a construction project "is not a major modification if it does not cause a significant emissions increase." 40 C.F.R. § 52.21(a)(2)(iv)(*a*). The challenged projects performed by Petitioners DTE Energy Company and Detroit Edison Company (DTE) did not cause a significant increase in emissions; in fact, emissions decreased substantially. Can the Government nonetheless persist in its claim that Petitioners constructed a "major modification" without a permit? That is the stark question this case presents.

The Government seeks to avoid the question by answering a different one: whether it is "categorically barred" from enforcing its NSR regulations until emissions increase. U.S. Opp'n (I). But Petitioners accept that NSR is a pre-construction program with the possibility of pre-construction enforcement. The Government could have pursued a permissible action to enforce its projection regulations, which can proceed regardless of any emissions increase. Instead, the Government claimed that DTE constructed a major modification without a permit, which, under the plain text of the regulations, indisputably requires a showing that the challenged project caused an increase in emissions.

At bottom, the Government wants to punish DTE for accurately predicting that its 2010 projects at Monroe 2 would not cause a significant increase in emissions and thus would not require an NSR permit. The Government's proof? Demonstrably incorrect post hoc preconstruction projections based on methodologies that are not specified, let alone man-

dated by, the NSR rules. The Government's legal justification that this "proof" can suffice? A tortured reading of the regulations to create ambiguity where none exists, coupled with the hardy perennial of deference based on *Auer* v. *Robbins*, 519 U.S. 452 (1997).

This fundamental misapplication of the Clean Air Act (CAA) and the nationally-significant NSR program—not to mention the insults to due process and separation of powers that attend any application of *Auer* deference—cries out for correction. The plain text of the NSR rules incentivizes operators of industrial facilities across the nation to ensure the core objective of NSR—preventing emissions increases—is satisfied. The Sixth Circuit's mandate, in contrast, raises the prospect of retroactive application of projection methodologies not specified in the regulations and that produce results that defy reality. The applicability of major environmental programs such as NSR should not be shrouded in such uncertainty. Cf. *U.S. Army Corps of Eng'rs* v. *Hawkes Co.*, 136 S. Ct. 1807, 1816 (2016) (Kennedy, J., concurring). Nor should the Government be permitted to "interpret" regulations to mean exactly the opposite of what they say. See *United Student Aid Funds, Inc.* v. *Bible*, 136 S. Ct. 1607, 1608-09 (2016) (Thomas, J., dissenting from denial of certiorari) (summarizing critiques against deference based on *Auer*).

The Court should grant certiorari and address the important issues presented by this case.

ARGUMENT

I. The NSR Rules Measure the Accuracy of Pre-construction Projections Through Actual Post-construction Data.

Under the CAA, "new" sources of air pollution must obtain NSR permits before commencing construction. Construction projects at existing plants qualify as new sources only if they cause an increase in emissions. So says the statute, which defines an NSR-triggering "modification" as a "physical change" that "increases the amount" of air pollution. 42 U.S.C. § 7411(a)(4). And so says EPA's implementing regulations, which state that a change causing a significant emissions increase is a "major modification," and one that does not cause such an increase is not a "major modification." 40 C.F.R. § 52.21(a)(2)(iv)(*a*); see also *Envtl. Def.* v. *Duke Energy Corp.*, 549 U.S. 561, 569 (2007); *New York* v. *EPA*, 413 F.3d 3, 38-40 (D.C. Cir. 2005) (*per curiam*).[1]

Because NSR is a pre-construction program—meaning that, if required, the operator must obtain its permit before commencing construction—EPA's rules specify that operators must predict whether the project in question will cause "actual emissions" at the plant to go up. 40 C.F.R. § 52.21(b)(41) (defining "projected actual emissions"). In the easy case, such as the construction of a completely new plant, where it is relatively easy to isolate new emissions and determine whether those emissions exceed the signifi-

[1] While the Government attempts to distinguish these cases, U.S. Opp'n 15-16, it cannot dispute that, as the D.C. explained, "'Congress directed the agency to measure emissions increases in terms of changes in actual emissions.'" *Id.* at 16, *quoting New York,* 413 F. 3d at 10.

cance threshold, these projections are not controversial. But with respect to construction projects at existing plants, the task is significantly more complex.[2] A comparison between operations in the past to operations in a five-year window in the future requires assessment of anticipated demand, which depends on a host of factors, including weather, economic activity, fuel prices, and regulatory climate. These variables can only be defined prospectively based on business and engineering judgment and thus are inherently subjective. Compounding the difficulty of the task, even small changes can affect the amount of projected actual emissions, especially for a large plant like Monroe 2.

In light of the inherent variability of preconstruction emission projections, EPA in the 2002 NSR rules gave operators certain basic instructions (*e.g.*, requiring selection of a two-year emission baseline in the prior five years, and specifying "significant" emission thresholds), but otherwise left to the operator's judgment how to apply the "projected actual emissions" test for determining NSR applicability. "[T]he owner or operator … [s]hall consider all relevant information," including "the company's own representations," its "expected business activity," and its "filings with the State or Federal regulatory authorities." *Id.* § 52.21(b)(41)(ii)(*a*). And operators shall "exclude, in calculating any increase in emissions that results from [t]he particular project, that portion of the unit's emissions following the project" that the unit "could have accommodated during the

[2] As Yogi Berra reportedly quipped, "It is tough to make predictions, especially about the future." Famous Quotes & Quotations, http://www.famous-quotes-and-quotations.com/yogi-berra-quotes.html (last visited Nov. 14, 2017).

consecutive 24-month period used to establish the baseline actual emissions … and that are also unrelated to the particular project, including any increased utilization due to product demand growth." *Id.* § 52.21(b)(41)(ii)(c). That is all—the regulations do not specify what weight should be given to a particular piece of "relevant information", they do not impose a specific methodology for excluding emissions unrelated to the project, and they do not require the operator to obtain prior approval of its pre-construction analysis.

EPA recognized that this system—in particular the absence of specific methodologies governing how to project or exclude emissions—would allow companies to employ differing projection approaches and assumptions, with differing results when predicting what might happen in the future. "Because there is no specific test available for determining whether an emissions increase indeed results from an independent factor such as demand growth, versus factors relating to the change at the unit, … [i]nterpretations may vary from source to source, as well as from what a permitting agency would accept as appropriate." 63 Fed. Reg. 39,857, 39,861 (July 24, 1998). So even a reasonable pre-construction projection that actual emissions would not increase due to a project could leave open the "reasonable possibility" that post-project emissions could nonetheless increase. 40 C.F.R. § 52.21(r)(6). But EPA did not use the "reasonable possibility" that a project might cause an emissions increase to eliminate the projected actual emissions test, or to provide greater specificity in how it should be applied, or to require prior approval of projections. Rather, EPA confirmed the availability of that test, 67 Fed. Reg. 80,186, 80,204 (Dec. 31,

2002), and provided that, where there is a "reasonable possibility" that emissions could increase despite a "no increase" projection, operators would not need to get a permit but rather would be required to monitor and to report emissions for five or ten years after the project in order to police their application of the demand growth exclusion using actual, measured emissions. 72 Fed. Reg. 72,607, 72,610-11 (Dec. 21, 2007).

It is thus unsurprising that EPA's 2002 NSR rules make actual post-construction data the touchstone for assessing, after the fact, the validity of preconstruction projections of actual emissions that might be caused by a project. "Regardless of *any such* preconstruction projections, a major modification results if the project *causes a significant emissions increase*...." 40 C.F.R. § 52.21(a)(2)(iv)(*b*) (emphases added). "Any such" preconstruction projection can be wrong—what matters is whether the project significantly increased the amount of air pollution.

By answering a different question—i.e., whether it is "categorically barred" from enforcing its regulations before construction, U.S. Opp'n 8, 12—the Government avoids any meaningful response to this straightforward language of EPA's rules. Instead, the Government relies on the pre-2002 NSR rules and cases addressing those rules for the unremarkable proposition that NSR is a pre-construction review program. See, *e.g., id.* at 4, 11. And Sierra Club, for its part, concedes that "an increase in emissions is a necessary element of a modification." Sierra Club Opp'n 24.

EPA's conscious decision to use actual emissions to test the validity of NSR applicability decisions has

legal consequences. To begin, the rules delineate the scope of EPA's ability to "enforce" NSR before construction of projects at existing plants commences. For example, EPA could have made the preconstruction notifications submitted where there is a "reasonable possibility" of an emissions increase, 40 C.F.R. § 52.21(r)(6), due months before commencement of construction to allow more thorough regulatory review of the operator's projection. EPA likewise might have imposed additional specific requirements for projections, including specific methodologies for, *inter alia*, applying the demand-growth exclusion. That way, EPA could more closely monitor the projection methodologies employed by operators before the project took place. And EPA could have required prior approval of projections, a fundamentally different system that would allow State or federal regulators the opportunity to prevent construction if they disagreed with the operator's judgment.

But EPA did not promulgate this type of scheme. Thus, Sierra Club's suggestion that DTE somehow failed to provide enough information in its preconstruction notice, Sierra Club Opp'n 2, is wholly misplaced.[3] So, too, is its complaint that DTE erroneously predicted that demand would grow and with it Monroe 2's emissions. *Id.* at 10-11. That is exactly

[3] Indeed, Sierra Club's suggestion is contradicted by the lower courts finding that DTE's notice was adequate, Pet. App. 97a-99a, and by EPA's own concession to the lower court that DTE's projections were based on a "'sophisticated computer model'" that considered "'exhaustive inputs.'" *Id.* at 38a (Rogers, J., dissenting) (quoting U.S. Br. at 13, *United States* v. *DTE Energy Co.*, 845 F.3d 735 (6th Cir. 2017) (Nos. 14-2274/2275). (*DTE II*)).

the point. Under EPA's all-encompassing yet non-specific methodology, projections can be highly variable and sometimes even entail the "reasonable possibility" of being incorrect.

Most fundamentally, when an agency (i) defines a "major modification" as a change that causes an increase in emissions, 40 C.F.R. § 52.21(a)(2)(iv)(*a*), (ii) clarifies that changes not producing such an increase are *not* major modifications, *id.*, and (iii) emphasizes that the validity of projections is tested using actual post-construction data, *id.* § 52.21(a)(2)(iv)(*b*), it cannot later prove that a project that did not cause an emissions increase was nonetheless a major modification based on an alternative—and demonstrably incorrect—projection. See U.S. Opp'n 5 (Arguing for NSR applicability determined based on the counter-factual judgment of the Government's "expert witness" provided "[d]uring discovery."). The rule of law does not work that way.

This Court should grant certiorari to restore clarity to this important gateway federal program.[4]

II. The Rules Allow EPA to Enforce Compliance With Its Projection Regulations, But That Is Not the Claim the Government Raised Here.

Contrary to the Government's suggestion, U.S. Opp'n (I), DTE does not ask the Court to hold that the Government is categorically precluded from pursuing an enforcement action before construction commences. As DTE has acknowledged, under the "project-and-report system" adopted in the 2002 NSR rules, see Sierra Club Opp'n 22, the Government re-

[4] See DTE Pet. 26-30 (demonstrating the importance of the issue).

tains authority to pursue preconstruction enforcement in a range of circumstances. For example, in cases where NSR applicability is not in dispute, such as the construction of a brand-new plant, the Government can seek an injunction mandating that the operator obtain a permit. And in cases where the operator has misapplied the unambiguous requirements of the regulations, for example by using an incorrect baseline period or simply failing to perform a pre-construction projection, the Government can pursue an injunction to require the operator to perform its pre-construction projection and to use the correct baseline.

But that is not the enforcement action the Government pursued here. Instead of challenging DTE's compliance with the specific requirements of the projection regulations, the Government sought to prove that the 2010 projects were "major modifications," notwithstanding that DTE's projections complied with the objective, unambiguous requirements of the projection rules, and that, in fact, actual post-project emissions *decreased*. That difference is of paramount importance, because it is why Judge Batchelder, the deciding vote in *DTE II*, concluded that the *DTE I* majority's limited mandate could be disregarded. "If the question had been whether or not [the Government] could challenge DTE's failure to comply with the regulations, then *DTE I* would have affirmed the summary judgment because [the Government] had raised no such claim." Pet. App. 21a (Batchelder, J., concurring). On Judge Batchelder's conclusion, the mandate of the Court below depends entirely.

The Government therefore goes too far when it suggests that DTE asks the Court to "categorically bar[ ]" enforcement actions where emissions have not

increased. U.S. Opp'n (I). Such actions are permissible, albeit in a much narrower category of circumstances than would have been available had EPA opted for a prior approval scheme in the 2002 NSR Rules. More precisely framed, the question is whether the Government can prove that a project was an NSR-permit-triggering major modification, when it did not, in fact, cause an increase in emissions. Under both the statute and the regulations, the answer must be "no."

III. The Court Should Grant Certiorari to Clarify That a Federal Agency Cannot, Through the Guise of "Interpretation," Change the Plain Meaning of Its Regulations.

The Government's non-textual enforcement-by-projection reading of the rules is deeply offensive to due process. DTE Pet. 24-26. When an agency leaves a governing regulation vague, it cannot, consistent with due process, exploit that vagueness to establish a hitherto unpublished standard of liability. *Id.* (citing, *inter alia*, *Christopher* v. *SmithKline Beecham Corp.*, 567 U.S. 142, 158-59 (2012)). The Government's attempt to prove that the 2010 Monroe 2 projects were major modifications based on application of a made-for-litigation and never-before-published projection methodology violates this principle. *Id.*

The Government claims that this argument was not raised in the Court below, but that is incorrect. DTE raised precisely this point in response to the Government's invocation of *Auer* deference in the Court of Appeals. DTE Br. at 69, *DTE II*. As DTE explained there, "The Government could not lawfully substitute a system that affords that measure of judgment for one that requires strict adherence to an unwritten methodology announced for the first time

in an enforcement proceeding." *Id.* That is the same argument we raise here. DTE Pet. 24-26.

In its Opposition, the Government carefully avoids mention of *Auer* but still invokes that very dubious deference doctrine. For example, the Government contends that 40 C.F.R. § 52.21(a)(2)(iv)(*b*)'s provision subordinating projections to actual post-construction data when deciding whether a project was a "major modification" is actually a one-way street that "simply expands the regulatory definition of 'major modification' to include projects that unexpectedly increase emissions." U.S. Opp'n 14. Under this view, if emissions go up unexpectedly, projections do not matter, but if post-project data confirm the operator's projection, an inaccurate enforcement-generated projection can trump. The regulations say no such thing. Nor can they fairly be read to allow for so absurd a result. The Government nonetheless justifies this gloss on the rules as "EPA's interpretation of its regulations as applied in this enforcement action." *Id.*

Even worse, the Government asks for deference for "the agency's interpretations of those [NSR] regulations at the time that it brought this enforcement action" *id.* at 10, while observing that "[t]he issues underlying this enforcement action" are currently "under consideration," *id.* at 9 n.2, and holding open the possibility that "[t]hat review may result in changes to the agency's regulatory approach." *Id.* at 17. So while the Government seeks deference to its counter-textual interpretation of the 2002 NSR rules in this case, it holds open the possibility that the meaning of this nationally significant regulatory program could change further, potentially confirming that (as the statute says) a "modification" requires

an emissions increase. Only in a world of *Auer* deference could an agency give a regulation different—and perhaps diametrically opposed—meanings depending on the timing of enforcement.

This case thus presents the Court with the opportunity to address whether *Auer* remains valid, and if so, whether it can be applied in the way the Government would seek to apply it here. As members of this Court have observed, *Auer* deference rests on an unstable foundation. Among other infirmities, *Auer* gives agencies the incentive to "issue vague regulations, because to do so maximizes agency power and allows the agency greater latitude to make law through adjudication rather than through the more cumbersome rulemaking process" *Thomas Jefferson Univ.* v. *Shalala*, 512 U.S. 504, 525 (1994) (Thomas, J., dissenting). Such vagueness "frustrates the notice and predictability purposes of rulemaking, and promotes arbitrary government." *Talk Am., Inc.* v. *Mich. Bell Tel. Co.*, 564 U.S. 50, 69 (2011) (Scalia, J., concurring). See also *Perez* v. *Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1210 (2015) (Alito, J., concurring in part and concurring in the judgment); *Decker* v. *Nw. Envtl. Def. Ctr.*, 568 U.S. 597, 615-16 (2013) (Roberts, C.J., concurring).

CONCLUSION

For these reasons and those set forth in DTE's opening brief, the petition should be granted.

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C. Dorsey

CHRISTOPHER R. DORSEY
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My commission expires July 31, 2018.

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REPLY BRIEF FOR PETITIONERS

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 2,977 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

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Permit Streamlining Overview 11_30_17.docx
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I have attached the briefing materials (2 documents) in prep for today's NSR meeting at 11:00 with Bill W.

Please call me or Mike Koerber with any questions relating to this information.

Thank you.

Pete SouthOAR/OAQPS/IO

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Organizer	Wehrum, Bill
Subject	NSR Improvement
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Start time	Thu 11/30/2017 11:00 AM All day event
End time	Thu 11/30/2017 11:45 AM

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Wehrum Meeting Request_ NSR I...

CAA Permit Streamlining – Possible New Source Review (NSR) and Title V Streamlining Actions

Actions listed below were assembled from public comments received on the Department of Commerce's 2017 solicitation on permit streamlining and related executive orders. The timing for individual actions is dependent on availability of staff and contractor resources, and if the action would be a guidance document or a rulemaking. Once we receive direction from OAR management, we can better assess timing and resource needs.

NSR Actions in Process

1. $PM_{2.5}$ and Ozone SILs Guidance
2. MERPs Guidance
3. $PM_{2.5}$ and Ozone Permit Modeling Guidance
4. GHG Significant Emission Rate Rulemaking

Possible NSR Actions (awaiting management direction for which actions to pursue)

1. Project Netting Guidance/Rulemaking
2. Non-Emitting Construction Activities Guidance
3. Actual-to-Projected-Actual Applicability Test Guidance
4. Project Aggregation Reconsideration
5. Contemporaneous Netting Guidance
6. Guidance for allowing flexibility in creation and use of emissions offsets
7. Reasonable Possibility Reconsideration
8. Debottlenecking Rulemaking
9. Fugitive Emissions Reconsideration
10. Ethanol Production Reconsideration
11. Timely Issuance of Permits Best Practices Guidance
12. BACT/LAER Best Practices Guidance
13. Routine Maintenance, Repair & Replacement Rulemaking
14. RACT/BACT/LAER Clearinghouse Improvements
15. Policy Memo and/or Rulemaking on considerations for biomass use in air permitting for stationary sources consistent with the goals of H.R. 244

Title V Actions in Process

1. Limiting re-review of construction permit decisions in title V (no-NSR lookback)
2. Developing electronic permit submission system
3. Developing Flexible Permitting website to communicate options for streamlining permitting (e.g., by using PALS and advance approvals)

Possible Title V Actions (awaiting management direction for which actions to pursue)

1. Develop guidance to encourage the use of administrative amendments, minor permit modifications and/or off permit procedures as a method of adding new applicable requirements.
2. Complete Title V Petitions Process rulemaking

Permit Streamlining Activities
Briefing for Assistant Administrator Bill Wehrum
November 30, 2017

Purpose of Briefing

- Provide a high level overview of permit streamlining-related actions and activities since January 2017. Activities include (1) presidential actions regarding permit streamlining; (2) permit "lean"; and (3) development of an e-permitting database.
- Obtain feedback/direction on responsive actions to take to simplify and accelerate NSR and title V permitting.

Timeline: Pursuant to Department of Commerce (DOC) report on permit streamlining and the EPA's Executive Order (EO) 13783 Report, an "action plan" is due from the Regulatory Reform Task Force by December 31, 2017. The "action plan" should address 11 areas of New Source Review permitting and one area for title V permitting (involving a statutory change).

Presidential Actions on Permit Streamlining

- **January 24, 2017, Presidential Memorandum.** Directed DOC to conduct outreach regarding the impact of federal rules on domestic manufacturing and solicit comments to streamline permitting and reduce regulatory burden.

- **Air Permitting Topics Covered.** (1) NSR permit processing; (2) NSR applicability; (3) NSR permit development (e.g., control technology, air quality impacts, emission offsets); (4) state/local relationships (i.e., cooperative federalism); and (5) title V permit processing. Recommended approaches included statutory, regulatory, and other types of changes (e.g., guidance).

- **Final Report issued by DOC on October 6, 2017.** Included 3 recommendations: (1) agency action plans due by December 31, 2017, addressing "priority areas for reform"; (2) establishment of annual regulatory reduction forum; and (3) expand the process model of FAST-41.

- **Priority areas for reform included 11 NSR related areas and 1 (statutory) title V area.** See CAA-related areas summarized in the attached table along with potentially responsive EPA actions.

- **Final Report on EO 13783 ("Promoting Energy Independence and Economic Growth") issued on October 25, 2017.** This Report called for the establishment of an "NSR Task Force" which the Administrator would be announcing in a forthcoming memorandum (not yet issued).

- **EO Comments and NSR Reform**

- **Other Title V Thoughts**

Permit Lean

- EPA-wide effort led by Henry Darwin, Asst. Deputy Administrator and Chief of Operations.

- Approximately 11 areas selected as "priority areas" including permitting across EPA and all media. This group, called the "Permitting Area Kaizen" or "PAK" is comprised of SES level representatives from OAR, Office of Water, and waste office (OLEM). The group is largely comprised of HQ representatives with two from regional water offices (R1 and R6).

- Initial focus is on EPA issued permits (across all media) and EPA "touch time" on state/local/tribal issued permits. "Phase II" will be to work with state/local/tribal agencies to reduce their permit issuance timelines.

- Problem statement: EPA and states often take too long to issue federal environmental permits.

- Stretch Goal: to issue all individual permits in less than 6 months and all general permits are done on time and in less than 12 months by 2022.

- Next steps involve data collection on EPA issuance of permits to assess current status and identification of permits/permit processes for kaizen events to be led by outside kaizen specialists. First kaizen events are anticipated to begin in January 2018.

Development of an E-Permitting Database

- Development of a national electronic system for EPA to collect and review of state issued title V permits.

- Phase 1: Focus on collecting state-issued permits, centralizing the storage and review of permits, publish permit review status to EPAs public website, receiving and processing applications, handling communications with the source on the application, and posting draft permits.

- Phase 2: Further development to include operating as a national permits database (public notice, receipt of public comments, development and issuance of the final permits, and storage of permits in a centralized location).

- Development of a national electronic system for EPA to collect and review state issued NSR permits. Initial effort would focus on a national system for tracking state issued permits, including a control technology information database.

- This would be followed by a fully integrated e-permitting system for EPA issued permits that would allow applicants to electronically submit permit applications and track permitting milestones (i.e., public notice, receipt of public comments, development and

issuance of final permits) and serve to store final permits in a centralized location.

Additional Related Efforts

- Developing a Flexible Permitting Website to encourage the use of streamlined mechanisms (such as PALS) to limit the number of permit revisions.

- Participating in E-Enterprise Leadership Council (with ECOS) on air agency-EPA workgroup to identify common metrics by which permit improvements can be measured. The purpose of this group is to make recommendations regarding consistent metrics/measures by which to evaluate success of permit streamlining efforts.

- Within EPA, OAR is engaged with regional offices and OCFO regarding measures/metrics to assess status and continuous improvement of EPA permitting programs and processes.

Attachment

DOC Report "Priority Areas for Reform"

On October 6, 2017, the Department of Commerce issued a report in response to the January 24, 2017, Presidential Memorandum titled "Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing". The DOC Report identified 20 sets of regulations and permitting reform issues as being a top priority for immediate consideration in a section titled "Recommendations and Priority Areas for Reform", including seven issues related to Clean Air Act activities. (Note, because some of these issues contain sub-issues, there are a total of 19 Clean Air Act issues/sub-issues.) Table 1 identifies these 19 issues/sub-issues, along with EPA actions identified in footnotes in the DOC Report and other possible actions suggested by OAR. Table 2 identifies other issues identified in the DOC Report.

Table 1. Priority Areas for Reform

Area of Emphasis (with footnotes)	Topic	Type	Potentially Responsive Actions	Timing[1]
New Source Review (NSR) or Prevention of Significant Deterioration (PSD) permits: **1.a.** Enforce the one-year turnaround time on NSR/PSD permit applications. *EPA will coordinate with state and local air agencies, as well as EPA regional offices, to develop best practices, guidance, or regulatory revisions necessary to ensure that NSR permits are issued consistent with the 12-month timeline described in the CAA.	NSR Permit Processing	Guidance	Conduct outreach with state/local permitting authorities regarding best practices, consult with regional offices about best practices, and develop guidance focusing on timely issuance of permits. Such guidance would likely include checklists, process steps and suggested timelines, and other tools to promote timely issuance of permits.	Short
		Guidance	EPA guidance to Regional Offices in reviewing and evaluating NSR permit actions and programs (or overall NSR oversight guidance). Guidance would clarify and limit EPA's role in state NSR permit actions	Mid
		Rule	Initiate process for considering how to enforce existing statutory/regulatory permit processing timelines (as applicable to PSD) and/or rulemaking to establish additional timeline requirements to include NNSR, e.g., completeness determination, draft permit issuance/denial timeframe).	Long
1.b. Reduce statute of limitations on challenges or appeals to one year. *EPA is pursuing regulatory action intended to streamline the Title V process. Congressional action would be required to reduce statute of limitations.	NSR Permit Processing	NA	EPA is not proposing actions to address the statute of limitations issue. Related to the second statement, EPA's potential title V streamlining actions are outlined below under **2.**	See item 2 below
1.c. Allow non-emitting construction activities to commence prior to receiving a permit. *EPA would need to review existing regulations and guidance and identify situations for which it would be appropriate to provide additional clarity and/or opportunities to begin construction	NSR Permit Processing	Rule/ Guidance	After considering whether or not there are situations in which sources can initiate some pre-permit activities, evaluate options to address this topic, including initiating rulemaking process to clarify and revise definition of begin actual construction and/or issuing guidance to identify activities that could occur prior to issuance of an NSR permit under the current regulations.	Long

[1] The Timing is described as "short" (0-6 months); "mid" (6-12 months); and "long (more than 12 months).

without a PSD permit.				
1.d. Consider options to revise the definition of Routine Maintenance, Repair & Replacement (RMRR) to provide more flexibility. *Legislation would be required for a change to the statutory definition. Respondents recommended considering potential regulatory actions to provide clarification and flexibility.	NSR Applicability	Rule prep. work	Initiate process for evaluating viability of rule options to exclude certain activities from NSR applicability including, but not limited to, RMRR, efficiency projects, clean units, and pollution control projects.	Long
1.e. Promote and facilitate use of flexible permitting mechanisms associated with PSD and Title V including, but not limited to, plant-wide applicability limits (PALs) and alternative operating scenarios. As part of this, consider any regulatory or other changes (e.g., guidance) that could facilitate more widespread use of these flexible permitting tools. *EPA could conduct outreach to educate sources and permitting agencies on the benefits of flexible permitting tools and also consider minor changes to PAL provisions to provide more incentives for sources to use PALs. EPA intends to highlight and encourage use of flexible air permitting options.	NSR Applicability	Outreach	Move forward to develop flexible air permitting website and outreach to promote plantwide applicability limits (PALs) and other flexible air permitting approaches. Engage in outreach/communication with state/local permitting authorities about these permitting flexibilities.	Short
	NSR Applicability	Rule	Initiate process for identifying rulemaking options to revise PAL regulations to increase flexibility. Evaluate feasibility/options for partial PALs and allowables PALs.	Long
1.f. Consider opportunities to streamline NSR applicability determinations and/or to reduce the number of facilities and projects that may be subject to NSR through evaluating and pursuing regulatory and guidance options for addressing aggregation, project netting, debottlenecking, and the methodology by which pre and post construction emissions are calculated. *EPA should review existing regulations and guidance to identify opportunities to address these issues and provide more flexibility through regulatory actions. Litigation is pending over EPA's 2009 aggregation and project netting rule; this litigation is pending resolution of EPA's reconsideration process.	NSR Applicability	Guidance	Initiate process to review previously issued policy statements that have become outdated, raise national consistency concerns, and/or could be more flexible under current regulations, and consider issuing guidance to clarify or present EPA's current interpretations. Relevant topics potentially include contemporaneous netting, project netting, applicability procedures and excludable emissions, modeling emission rates, and aggregation. Identify options for releasing updated statements on these documents.	Mid
	NSR Applicability	Rule prep. work	Initiate internal discussions and research on options for rulemakings described below.	Short
	NSR Applicability	Rule	Project Netting. Consider rule options to increase flexibility regarding step 1 of the NSR emissions increase test. Consider allowing accounting of emission decreases in step 1.	Long
	NSR Applicability	Rule	Debottlenecking. Consider rule options to change the methodology for calculating emission increases at unchanged units. *Note: EPA proposed changes in 2006, but then we*	Long

			withdrew our proposal.	
	NSR Applicability	Rule	Hourly emissions test. Consider rule options to apply an NSPS applicability test or screen to the NSR applicability provisions.	Long
	NSR Applicability	Rule	Project Aggregation. Consider rule options to clarify the principles and criteria to be considered in aggregating nominally separate changes into a "project" for purposes of NSR applicability. The 2009 aggregation rule remains under reconsideration with stayed litigation.	Long
1.g. Issue guidance on modeling concurrent with promulgation of revised National Ambient Air Quality Standards (NAAQS), to ensure timely clarification on modeling required as part of a NSR application. *EPA has committed to timely issuance of guidance.	NSR Air Quality Impacts	NA	EPA's practice is to provide timely modeling guidance as appropriate concurrent with future revised NAAQS. There are no forthcoming NAAQS revisions to which this action could apply. *EPA is not recommending any specific action at this time.*	NA
1.h. Consider opportunities to "grandfather" NSR applications following revision of a NAAQS. *Existing regulations provide some opportunities for "grandfathering" NSR applications.	NSR Air Quality Impacts	NA	This has been EPA's practice since 2012, but is currently being litigated in the litigation on the 2015 O3 NAAQS. EPA will consider grandfathering provisions for any future NAAQS revisions. There are currently no proposed NAAQS revisions to which this action could apply. *EPA is not recommending any specific action at this time.*	NA
1.i. Consider opportunities to emphasize key aspects of the Best Available Control Technology (BACT) analysis including, but not limited to, expectations regarding technology determinations. *EPA would need to evaluate what could be provided to streamline BACT determinations.	NSR Control Technology	Guidance	Consider options for new guidance development to emphasize existing flexibilities through examples and highlights of strategies for streamlining BACT analyses and determinations. There may be some regulatory options here as well but further research would be needed to identify those.	Mid
1.j. Consider opportunities to expand the purchasing of offsets outside of the local areas as well as other offset related revisions which would provide increased flexibility and burden reduction.	Nonattainment NSR Emissions Offsets	Guidance	Consider options for new guidance development to increase flexibility on emissions reductions that may qualify for use as offsets under NNSR, specifically addressing secondarily formed pollutants and transport issues.	Mid
Title V Operating Permits **2.** Extend the term of title V permits from 5 to 10 years. *EPA is completing the petitions rulemaking that will revise part 70 to clarify and streamline the process by which EPA receives and reviews title V petitions, thereby increasing transparency and efficiency for regulated	Title V Permits	NA	Section 502 of the CAA limits the period of a title V permit to 5 years. Congressional action is needed to alter this requirement. *EPA is not recommending any specific action at this time.* .	NA
	Title V Permits	Rule	Take final action on petitions rulemaking and consider whether to include some description of how EPA reviews NSR/PSD issues when raised in the context of a title V petition. Evaluate comments received to identify if additional	Mid

entities and environmental agencies. This action will address how EPA intends to review title V petitions in an effort to reduce opportunities to raise NSR issues in the context of title V.			policy statements could be added to preamble of the final rule consistent with recently signed orders (e.g., in two title V petition responses signed in October 2017 (PacifiCorp Hunter and Big River Steel), EPA articulated a new policy and legal rationale for limited NSR lookback in the context of title V permit actions and petitions).	
National Emission Standards for Hazardous Air Pollutants (NESHAP) **3.a.** EPA should increase efforts to consider opportunities to reduce costs and avoid duplicative requirements in conducting reviews of NESHAP standards.	NESHAP Reviews	Rules	Looking for opportunities to consolidate rules and to reduce reporting and recordkeeping burden as RTR's are reviewed under court ordered deadlines in 2018, and harmonize requirements with other rules as appropriate.	Mid
3.b. EPA should take steps to ensure that any new requirements considered under Residual Risk and Technology Reviews (RTRs) would not be redundant or unreasonably costly. *Under its existing authorities EPA is taking action to harmonize NESHAP and NSPS obligations.	RTR Reviews/ NSPS Reviews	Rules	Working closely with the coatings industry to evaluate strategies to revise and improve effectiveness of regulations. Reviewing leak detection and repair (LDAR) and monitoring, record keeping, and reporting (MRR) requirements and frequency in upcoming NESHAP, NSPS and other specific rules as deemed appropriate) to explore opportunities for consolidation and simplification.	Mid
Startup, Shutdown and Malfunctions (SSM) **4.** Consider options to provide relief for facilities through affirmative defenses or other avenues to account for unforeseeable and uncontrollable emissions during periods of SSM. EPA previously adopted an interpretation which exempted SSM periods from the emissions restrictions that apply under normal operating periods. *Pending litigation. Whether such exemptions and affirmative defenses can be allowed under the CAA is central to the litigation.	NSR, SIPS, NESHAP, NSPS	Rules	Continuing to seek input and evaluate SSM requirements across regulatory program(s).	Mid
National Ambient Air Quality Standards (NAAQS) **5.a.** EPA should develop options that consider "real world measurements" instead of "probabilistic models" for PSD purposes.	NAAQS		EPA's *Guideline on Air Quality Models* allows for monitoring in lieu of modeling for situations where it has been demonstrated that available models are inappropriate to characterize impacts from a modifying source under PSD. We are not aware of any demonstrations under this provision. In the recent revisions to the	NA

*EPA is concerned that this approach would result in a directive that would impose greater costs on regulated facilities. This issue is similar to many raised in the NSR/PSD suggestion.			*Guideline*, EPA emphasized the need to rely upon ambient monitoring data to adequately represent "background sources" and, in cases where nearby sources are modeled, to use actual emissions rather than allowable emissions. *EPA is not recommending any specific further action at this time.*	
5.b. EPA should extend NAAQS reviews from 5 to 10 years. *Altering the NAAQS timeframe would require congressional action. EPA should consider opportunities to ensure that any forthcoming reviews are not redundant and are completed expeditiously.	NAAQS	Rules	Section 109 of the CAA requires the EPA Administrator to review, and revise as may be appropriate, the national ambient air quality standards every five years. Congressional action is needed to alter this requirement. *EPA is not recommending any specific action at this time.*	NA
5.c. Ozone: delay implementation of the 70 parts per billion (ppb) standard or retain the earlier 75 ppb standard.	NAAQS	Rules	In accordance with section 109 of the CAA, on October 1, 2015, the EPA Administrator concluded her review of the ozone NAAQS and determined that the 2008 standard should not be retained. The primary and secondary ozone standard levels were revised to 70 ppb. The indicators (O3), forms (fourth-highest daily maximum, averaged across three consecutive years) and averaging times (eight hours) were retained. *EPA is not recommending any specific action at this time.*	NA
NSPS **6.** Consistent with its authorities under section 111 of the CAA, EPA should consider adding exemptions for R&D related activities or otherwise streamline requirements for R&D activities for New Source Performance Standards promulgated under Section 111 of the CAA. *EPA is evaluating its authority to exempt R&D related activities under section 111. EPA has routinely considered adding exemptions for R&D related activities and has added specific R&D exemptions in the past.	NSPS	TBD	Evaluating opportunities and challenges to consider providing exemptions for R&D related activities in NSPS, particularly for the coatings industry.	Mid
Unified Coatings Rule **7.** EPA should issue a Unified Coatings Rule (UCR) that facilities could choose to meet (replacing the eight overlapping NSPS and NESHAP regulations that apply to coatings.) *There is ongoing litigation regarding several NESHAP. EPA cannot provide specifics. EPA has			EPA is working closely with the coatings industry to evaluate strategies to revise and improve effectiveness of regulations. *EPA is not recommending any specific action at this time.*	NA

court ordered options with an UCR to provide flexibility that encourages facilities to meet the rule by using pollution prevention approaches.				

Table 2. Other Issues Identified in DOC Report, but Not Included in List of "Priority Areas for Reform"

Category	Other Issues
NESHAP	1. The NESHAP and NSPS requirements should be consolidated and rationalized (e.g., the National Association of Manufacturers (NAM) gives a specific example of the opportunity to rationalize 8 different regulations for different coating processes). 2. Residual Risk and Technology Reviews (RRTRs) lead to additional requirements with no (or limited) environmental benefit. 3. Once-in-always-in policy creates a disincentive for companies to reduce emissions since a major source remains subject to a MACT standard even if the "facility undertakes pollution prevention or installs control devices to reduce emissions below the major source applicability thresholds." 4. Length and complexity of the industrial and commercial boilers/process heaters MACT rulemaking process has created uncertainty for manufacturers. 5. EPA is using enforcement actions to impose limits beyond what is required in the NSPS.
NSR (Overlap, Duplication, and Coordination)	1. Companies are often required to separately report the same information to multiple regulatory offices and programs. For example, date on air emissions are typically reported as part of permit compliance reports, to state air emission inventories, and to EPA's Toxic Release Inventory program. One association suggested a "reporting portal" be created by EPA with state/local regulators to allow manufacturers to report information needed by regulatory programs only once.
GHG Requirements	1. EPA should prioritize an expedited and judicious review of SER thresholds for GHGs. EPA's proposed threshold of 75,000 tpy is too low.
NAAQS	1. Improve air quality and dispersion models. Some suggestions for improvement include: a. Re-examining assumptions about background concentration levels b. Re-examining the treatment of fugitive emissions c. Use of actual emissions rather than theoretical or maximum operating rates d. Employing probabilistic models e. Reconsider inappropriate "ambient air receptor" locations where individuals will not generally be exposed to emissions 2. Re-examine and clarify how to account for international and long-range transport of ozone, and exceptional events. EPA has a policy which would allow it to *"disregard exceedances of a NAAQS caused by certain types of exceptional events*," such as stratospheric intrusions. However, in practice it is difficult to obtain EPA "recognition" of exceptional events in an NSR application.
Regional Haze	1. EPA is interfering with the implementation of the Regional Haze Rule by implementing restrictions in NOx emissions and emissions from electric generators, and forcing states to impose high cost, low benefit pollution controls. States are to have the primary role in determining how best to make emissions reductions and define their own "glide-path" to achieving the goal.
Rulemaking Process	1. Cost benefit analysis methods should be refined and made more rigorous. Cumulative costs should be rigorously weighed where appropriate. There should be meaningful public engagement prior to issuing significant proposed rules. Regulations should be more sensitive to the impact on small business. Regulations should only be enacted and enforced when there are adequate resources available for review, implementation and oversight.

To: Nizich, Greg[Nizich.Greg@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]; Edwards, Chebryll[Edwards.Chebryll@epa.gov]
From: Stoneman, Chris
Sent: Thur 6/15/2017 6:21:29 PM
Subject: FW: Voice Mail - Tribal Lands NSR
EPA EO 13777.pdf

GPA comments.

From: Stovall, Jeffrey [mailto:Jeff.Stovall@crestwoodlp.com]
Sent: Thursday, June 15, 2017 2:13 PM
To: Stoneman, Chris <Stoneman.Chris@epa.gov>
Subject: RE: Voice Mail - Tribal Lands NSR

Chris,

Thanks again for discussing the Tribal Lands NSR program with me today. Attached is a copy of the comments that GPA Midstream submitted related to Regulatory Reform (see Item 4).

Thanks,

Jeff Stovall, P.E.

Director, Environmental

P: 817-339-5474 | C: 817-657-3729

From: Stoneman, Chris [mailto:Stoneman.Chris@epa.gov]
Sent: Thursday, June 15, 2017 6:45 AM
To: Stovall, Jeffrey
Subject: RE: Voice Mail - Tribal Lands NSR

Hi Jeff –

I got your voicemail and email. I was trying to track down a couple of things before getting in touch. That should be today. Sorry to put you off. Lots going on. But my plan is to call today.

Thanks.

Chris

From: Stovall, Jeffrey [mailto:Jeff.Stovall@crestwoodlp.com]
Sent: Tuesday, June 13, 2017 10:37 AM
To: Stoneman, Chris <Stoneman.Chris@epa.gov>
Subject: Voice Mail - Tribal Lands NSR

Chris,

I left you a similar voice mail this morning. I called on behalf of the GPA Midstream Association to circle back on our meeting in RTP a few months ago where we discussed the Tribal Lands NSR program. Our members have now had some experience utilizing the FIP, but note two areas that remain challenging:

1. Sites that need a synthetic minor limit.

2. Sites in areas that may go nonattainment.

Regarding Item 1, we have several examples of projects that have been relocated, revised, or eliminated. This is primarily a timing issue. Thus, we wanted to see if EPA is considering a General Permit and/or other regulatory changes that might impact these two items. If not, we would welcome the opportunity to discuss what options might exist.

Please call me at your convenience to discuss further.

Thank you,

Jeff Stovall, P.E.

Director, Environmental

P: 817-339-5474 | C: 817-657-3729

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May 15, 2017

Via e-filing on www.regulations.gov

Office of Regulatory Policy
Office of Policy
Mailcode 1803A
Attention: Docket ID No. EPA-HQ-OA-2017-0190
12000 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Comments on Executive Order 13777: Enforcing the Regulatory Reform Agenda

Dear Docket Clerk:

The GPA Midstream Association (GPA Midstream) appreciates this opportunity to submit comments on the Executive Order 13777 "Enforcing the Regulatory Reform Agenda," reflected at 82 Fed. Reg. 12285 (March 1, 2017), and on EPA's request for comments on "Evaluation of Existing Regulations" (82 Fed. Reg. 17793 (April 13, 2017). GPA Midstream has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA Midstream is composed of early 100 corporate members of all sizes that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead, as well as the extraction for sale of natural gas liquid products ("NGLs") such as ethane, propane, butane and natural gasoline. GPA Midstream members account for more than 90 percent of the NGLs produced in the United States from natural gas processing. Our members also operate hundreds of thousands of miles of domestic gas gathering lines and are involved with storing, transporting, and marketing natural gas and NGLs.

GPA Midstream commends EPA for establishing a Regulatory Reform Task Force (RRTF) to evaluate existing regulations and make recommendations regarding their repeal, replacement, or modification. Our members are directly impacted by dozens of EPA rules, and we have a long history of collaborating with EPA on rulemaking through public comments and meetings. Accordingly, we are pleased to present our comments below for consideration by the RRTF listed in general order of priority. Items 1 and 2, in particular, merit close attention by the RRFF.

GPA Midstream Association
Sixty Sixty American Plaza, Suite 700
Tulsa, Oklahoma 74135
(918) 493-3872

1. **EPA Should Repeal New Source Performance Standards (NSPS) for the Oil and Natural Gas Industry, Subpart OOOOa Since an Endangerment Determination, as Required by the Clean Air Act, was Not Made Prior to Issuance of the Rule.** On June 3, 2016, EPA promulgated NSPS OOOOa for new, modified, and reconstructed sources at oil and gas facilities. NSPS OOOOa is a very significant rule in several regards. It is the first NSPS to directly regulate methane emissions for the oil and gas industry, and it introduces a wide-ranging leak detection and repair (LDAR) program for affected well sites and compressor stations. GPA Midstream provided extensive input to EPA throughout the rulemaking process for NSPS OOOOa through its comment letter dated December 4, 2015, supplemental information provided April 15, 2016, and several meetings and teleconferences.[1] In particular, the 2015 comment letter notes that EPA must make an endangerment determination for methane emissions from the oil and natural gas sector prior to issuing regulations under Section 111 of the Clean Air Act. EPA's prior endangerment finding for the oil and gas industry did not address methane emissions. GPA Midstream also explained that many of the requirements of NSPS OOOOa—including the LDAR program—imposed regulatory costs that vastly exceeded expected benefits.

   If EPA chooses not to repeal NSPS OOOOa, EPA should reference GPA Midstream's White Paper provided in February 2017, for technical revisions. After publication of the final NSPS OOOOa rule, GPA Midstream filed a petition for review and a petition for reconsideration on August 2, 2016, due to multiple issues with the final rule.[2] The petition for review carried forward several unresolved items from NSPS OOOO that also appear in NSPS OOOOa. GPA Midstream provided a White Paper in February 2017 summarizing its key issues in support of the Petition for Review. In addition, the 2016 Control Technique Guidelines should be suspended pending review by EPA in parallel with the review of the 2016 NSPS OOOOa rulemaking, and should be subject to the same regulatory action that results from the NSPS OOOOa regulation review.[3]

2. **EPA Should Rescind the Greenhouse Gas Reporting Program (GHGRP) as it applies to Oil and Natural Gas Facilities.**[4] The GHGRP was originally promulgated in 2009 to gather information about greenhouse gas emissions from various industry segments with the stated purpose to inform future rule making. It is important to emphasize that this rule only produces reported data and provides no direct environmental benefit. Within the GHGRP, the oil and gas industry is disproportionately burdened compared to other industry segments as it is required to take physical on-site measurements and report data for numerous source types for thousands of sites. The burden was increased by orders of magnitude starting in

[1] GPA Midstream submitted Subpart OOOOa comments to EPA Docket Number EPA-HQ-OAR-2010-0505-6881 on December 4, 2015. The supplemental letter was submitted to EPA Docket Number EPA-HQ-OAR-2010-0505-7552 on April 15, 2016.
[2] Petition for Review filed in the U.S. Court of Appeals for the District of Columbia Circuit filed on August 2, 2016 (Case 16-1242). The Petition for Reconsideration in letter from Mr. Matt Hite (GPA Midstream) to Ms. Gina McCarthy (EPA) dated August 2, 2016.
[3] Control Techniques Guidelines for the Oil and Natural Gas Industry (EPA-453/B-16-001) issued on October 20, 2016.
[4] 40 CFR Part 98 Subparts A, C, W, MM, NN, PP and UU

2016 with the expansion to include gathering and boosting stations.[5] Many of GPA Midstream's member companies spend hundreds of thousands of dollars each every year in order to comply with the GHGRP. Since the 2010 reporting year, EPA has gathered immense amounts of data from industry. Yet, in justifying the expansive Oil and Gas Information Collection Request (ICR)[6] in 2016, EPA determined that GHGRP data was insufficient to support development of a rule for the oil and gas sector. This starkly contrasts with the stated purpose of the GHGRP to inform future rule decision-making. If the GHGRP cannot perform its stated purpose and creates significant burden with no direct environmental benefit, it should be rescinded.

As an alternative, EPA should significantly revise the GHGRP as it applies to the Oil and Natural Gas Industry in order to limit the cost and burden on operators. GPA Midstream has submitted numerous rounds of comments on the GHGRP[7], in particular Subpart W, and has several outstanding Petitions for Review[8]. Many of the comments and supplementary materials are still relevant today, as EPA has made only minimal rule changes from the information that was submitted. A simplification to Subpart W is imperative. As evidenced by the emissions data submitted annually, the emissions from the oil and natural gas industry rarely change significantly from year to year. EPA could obtain the same quality of information from inventories that are submitted at a frequency less than annually decreasing the associated cost and labor. In addition, the vast majority of emissions reported for the oil and gas sector are combustion emissions. However, this industry spends the vast majority of its time and money reporting emissions for other source types in Subpart W. Therefore, the overall cost and burden of this rule can be significantly reduced for the oil and gas industry by addressing issues as outlined in previous GPA Midstream comments and petitions.

3. **EPA Should Not Add Natural Gas Processing Plants (Gas Plants) to Toxics Release Inventory (TRI) Reporting.** On January 6, 2017, EPA published a proposed rule to add gas plants as an industrial sector covered by the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), commonly known as the Toxics Release Inventory (TRI).[9] The Oil & Gas Sector, specifically SIC Code 1321 (NAICS Code 211112 for Natural Gas Liquid Extraction), was not originally included as a TRI covered sector in 1987 and has not been included during the history of the TRI program. In this 30 years, neither the number of gas plants nor the chemicals expected to be present at most gas plants has significantly changed. We believe the added cost for reporting is underestimated, the reporting is duplicative to other programs, and the evidence as

[5] 80 Fed. Reg. 64262 – 64298 (October 22, 2015)
[6] GPA Midstream fully supports EPA's decision to withdraw the ICR.
[7] Subpart W Gathering and Boosting Expansion comments submitted on February 24, 2015.
[8] Petition for Administrative Reconsideration in letter from Mr. Jeff Applekamp (GPA) to Ms. Lisa Jackson (EPA) dated February 11, 2011. Petition for Review filed in the U.S. Court of Appeals for the District of Columbia Circuit filed on January 22, 2016 (Case 15-1473).
[9] 82 Fed. Reg. 1651 (January 6, 2017).

presented does not support the need for the expansion. GPA Midstream encourages the RRTF to review its comment letter dated May 1, 2017 for additional detail.

4. **EPA Should Develop a Streamlined Synthetic Minor Oil and Gas Permitting Mechanism Under the Tribal Lands New Source Review (NSR) Program, as Many State Agencies Have Done.** On July 1, 2011, EPA promulgated a NSR permitting program for minor sources located on Tribal Lands. EPA subsequently identified a need for a streamlined permitting mechanism for the significant number of oil and gas sites located on Tribal Lands, and accordingly promulgated a Federal Implementation Plan (FIP) registration program on June 3, 2016. Unfortunately, the FIP registration is restricted to true minor sources, leaving many proposed projects, especially in the midstream sector, with only the option of acquiring a site-specific individual synthetic minor permit. EPA's regulations provide the agency with a *year* to issue a synthetic minor permit.[10] This delays and even kills some infrastructure projects or causes companies to relocate projects to surrounding areas creating an uneven playing field for the tribes. Furthermore, the delay in constructing pipeline infrastructure can increase well pad flaring thereby causing significant, unnecessary air emissions from the production sector. GPA Midstream urges the RRTF to review its comments submitted on July 21, 2014 and December 4, 2015 for additional information on streamlining NSR permitting in Tribal Lands.

5. **EPA Should Finalize its 2007 Proposed Rulemaking to Remove the Once in Always In (OIAI) Policy for Major Sources under Maximum Achievable Control Technology (MACT) Standards**.[11] The OIAI policy originated from a May 16, 1995, EPA memorandum, which established that a MACT major source could not later reduce its emissions to become an area source after the first substantive compliance date. On January 3, 2007, EPA proposed rulemaking to repeal the OIAI policy by allowing a MACT major source to limit its emissions sufficiently to become an area source and thus no longer be subject to major source requirements. The current OIAI policy can often add significant equipment cost and compliance burdens years after the initial emission reductions were achieved. For example, equipment, such as engines, are regularly changed at oil and gas gathering sites, and the newly added equipment should not be subjected to a burdensome regulation simply because the site housed larger emitting sources in its past.

6. **EPA Should Rescind its State Implementation Plan (SIP) Call for Startup, Shutdown and Malfunction (SSM) Rules that 36 States' Clean Air Programs Fail to Meet Clean Air Act Requirements Based on Those Plans' Allowance for Unavoidable Emissions During SSM Conditions**. On June 12, 2015, EPA published its Final Action on State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of

[10] Per 40 CFR §49.158(b)(7).
[11] 72 Fed. Reg. 69 (January 3, 2007).

EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction.[12] EPA misapplies the legal precedent under which it claimed authority to take this Final Action, and otherwise serves to remove longstanding provisions of appropriate and necessary rules under state SIPs. State SSM rules are legally appropriate, as the Clean Air Act allows states wide discretion in fashioning their clean air plans, and the Fifth Circuit Court of Appeals has upheld EPA's past approval of SSM provisions in the Texas SIP.[13] GPA Midstream generally supports the petitioner's arguments made in the consolidated cases challenging the SIP call that are currently pending before the D.C. Circuit, *Walter Coke, Inc. v. EPA*, D.C. Cir. Case No. 15-1166.

7. **EPA Should Reaffirm the 2008 National Ambient Air Quality Standard (NAAQS) for ozone and Reconsider the 2015 NAAQS for ozone.**[14] The 2015 ozone standard was unnecessary because the 2008 ozone standard already provided an adequate margin of safety for public health, and was resulting in decreasing ozone levels. GPA Midstream references its comments that were submitted on March 17, 2015, [15] and endorses the comments submitted by the American Petroleum Institute (API) on the 2015 ozone standard.

8. **EPA should conduct an advanced notice of proposed rulemaking (ANPR) on Risk Management Program (RMP) amendments.** On April 3, 2017, EPA published a proposed rule to further delay the effective date of a final RMP Amendments rule until February 19, 2019, stating that this delay would allow the EPA time to consider petitions for reconsideration of this final rule and take further regulatory action.[16] GPA Midstream believes that additional regulatory changes are needed for the RMP program and urges EPA to issue an ANPR that will provide all interested parties with an opportunity to comment on the issues raised in the reconsideration petitions, notably changes in the RMP program elements involving compliance audits, emergency response drills and preparedness activities, and information sharing. Such a process will inform EPA's decision making and ensure that any proposed rule to amend the RMP program is consistent with the goals of EO 13777.

9. **EPA Should Provide Practical Relief from Technical Requirements for Air Dispersion Modeling on the 1-Hr (NO2, SO2) and 24-Hr (PM2.5) National Ambient Air Quality Standards (NAAQS).** It has been generally recognized that air quality models used by regulatory agencies, *e.g.*, AERMOD, are overly-conservative for the type of facilities GPA Midstream members operate. As a result, natural gas industry participants have been unnecessarily burdened during the air quality permitting process for new facilities in an effort to demonstrate compliance with the 1-Hr NAAQS for NO2 and SO2 or the 24-Hr NAAQS

[12] 80 Fed. Reg. 33,840 (June 12, 2015).
[13] See *Luminant Generation Co. v. EPA*, 699 F.3d 427 (5th Cir. 2012).
[14] 80 Fed. Reg. 65291 (October 26, 2015).
[15] Per letter from Mr. Matt Hite (GPA Midstream) to EPA Docket Center dated March 17, 2015. Docket No. EPA-HQ-OAR-2008-0699-3742.
[16] 82 Fed. Reg. 16146 (April 3, 2017).

for PM2.5. GPA Midstream members find that permit issuance can take longer than necessary, thus delaying infrastructure projects, while unnecessarily complex air quality modeling is performed. Companies may also install costly and unnecessary emission controls in order to model NAAQS compliance, and in some cases, companies are required to install costly air quality monitoring systems at new facilities. GPA Midstream recommends that significant practical relief be provided by EPA, in implementing the 1-Hr NAAQS for NO2 and SO2, and the 24-Hr NAAQS for PM2.5, so that air dispersion modeling is not required altogether for minor emitting projects and greatly simplified for larger ones.

10. **EPA Should Incorporate Alternative Emission Testing Methodology into the Standards of Performance for Stationary (NSPS) Spark Ignition Internal Combustion Engines, Subpart JJJJ to Reduce Costs.** On January 18, 2008, EPA promulgated NSPS JJJJ for stationary engines which includes, among other requirements, emissions testing for natural gas-fired engines. NSPS JJJJ bifurcated larger natural gas engines into engine that are certified by the manufacturer and non-certified engines. Non-certified engines are subject to more frequent emissions testing, adding costs for operators and compliance oversight for regulatory agencies. It is evident from reading the support documents from the January 18, 2008, final rule that EPA anticipated widespread adoption of the certification program by manufacturers. This did not happen. Very few large natural engines are certified which shifts the cost and burden of recurrent emissions testing to the end-user.

11. **EPA Should Amend MACT ZZZZ Remote Engine Status to Base Remote Status Solely on the Current Location of the Engine.** On January 30, 2013, EPA amended 40 CFR 63, Subpart ZZZZ for stationary engines which allowed engines located at "remote" sites to utilize work practice standards rather than more expensive and burdensome control requirements.[17] This amendment established that in order to maintain remote engine status at an area source, the engine must have been located at a remote location on October 19, 2013 and must always be located at a remote location after this date. Stationary engines are frequently moved between midstream locations. This imposes significant burden to demonstrate that each engine currently located at a remote location has never been set at a non-remote location since 2013. As time goes by, this requirement becomes increasingly difficult as engines continue to relocate between sites and change ownership. Moreover, the underlying basis for establishing the remote status is that the site was located in minimally populated area; thus, the location history of the engine should have no impact.

12. **EPA Should Revise National Emission Standards for Hazardous Air Pollutants (NESHAP) From Oil and Natural Gas Production Facilities, Subpart HH, Specifically 40 C.F.R. §63.760(f), to Ensure Facilities that Become Major Sources Due to Change in Gas Composition Have Three (3) Years to Achieve Compliance.** Currently, the rule can

[17] 78 Fed. Reg. 6674 (January 30, 2013).

be interpreted to read that facilities that become major sources are required to comply immediately, which is unrealistic and would needlessly subject these sources to compliance risks, as GPA Midstream noted in its comment letter on a EPA's recent Request for Information on MACT HH.[18]

EPA must revise the emission limit for small dehydrator units at major sources of Hazardous Air Pollutants (HAPs) under NESHAP Subpart HH. Based on the requirements for small dehydrator units found in 40 C.F.R. §63.765, EPA has created unreasonable destruction efficiencies for units with very low HAP content in the facility's inlet natural gas stream. This problem is especially prominent in midstream facilities. EPA must establish either an inlet gas total HAP or benzene de minimis concentration, or a dehydrator unit uncontrolled total HAP or benzene emission de minimis, below which the small glycol dehydrator would not be required to reduce emissions. GPA Midstream provided additional detail in its comment letter on EPA's recent Request for Information on MACT HH.[19]

13. **EPA Should Reassess the Leak Detection and Repair (LDAR) Penalty Policy and Submit it for Public Comment by Affected Stakeholders.** On November 2, 2012, EPA released Appendix VI, Leak Detection and Repair Penalty Policy which provides guidance to regulators regarding how to calculate settlement penalties for violations. The guidance assigns dollar amounts to different types of programmatic misses in an LDAR program. However, the document does not provide explanation as to the origin of these numbers which appear to be arbitrary, without technical basis, and no degree of alignment to environmental harm. Had this policy undergone a public comment process, affected stakeholders would have had the opportunity to comment on the numbers, and EPA would have been able to ensure that there was a technical basis to support its policy.

14. **EPA Should Withdraw its Next Generation Compliance Tools in Civil Enforcement Settlements Policy Memorandum.** If EPA's objective is to enhance current programs, it should first provide a public comment period for affected stakeholders. The EPA Memorandum "Use of Next Generation Compliance Tools in Civil Enforcement Settlements" was issued January 7, 2015. Similar to the LDAR penalty policy, EPA has utilized this memorandum in lieu of rulemaking to supplement current regulatory requirements and as part of enforcement settlements. The use of next generation compliance tools is an important issue and EPA should solicit comment from all interested stakeholders before determining how to use these tools in the context of settlement.

[18] Per letter from Mr. Matt Hite (GPA Midstream) to Ms. Gina McCarthy (EPA) dated March 11, 2016, in regard to National Emission Standards for Hazardous Air Pollutants; Request for Information (Docket EPA-HQ-OAR-2015-0747).
[19] Ibid.

15. **EPA needs to provide applicants with a defined process and timeline under Section 103 of the Ocean Dumping Act to ensure predictable and manageable project schedules.** The EPA is responsible for issuing permits that allow disposal of dredge material at designated Offshore Disposal Placement Areas (ODMDS) under the Marine Protection, Research and Sanctuaries Act (MPRSA) or Ocean Dumping Act (ODA)). Section 103 specifically pertains to permits for the discharge of dredged material where the applicant can be a third party, including private oil and gas companies. Section 103 must comply with permitting regulations in 33 CFR Parts 320-330 and is evaluated by the U.S. Army Corps of Engineers. These requirements are extensive and highly technical leaving them open for interpretation. The sole guidance document, ("the Green Book") is approximately 25 years old and some EPA regions have guidance documents that assist with the decision making, while other regions don't. GPA Midstream recommends that EPA needs to develop a process that allows for fair and reasonable effort by the applicant to result in timely and predicable outcomes.

Thank you for your consideration of our comments. Please feel free to contact me if you have any further questions.

Sincerely,

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association

To: Zimpfer, Amy[Zimpfer.Amy@epa.gov]
Cc: Rios, Gerardo[Rios.Gerardo@epa.gov]; Nguyen, Thien Khoi[nguyen.thien@epa.gov]; Yannayon, Laura[Yannayon.Laura@epa.gov]; Christenson, Kara[Christenson.Kara@epa.gov]; Adams, Elizabeth[Adams.Elizabeth@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]; Iglesias, Amber[Iglesias.Amber@epa.gov]; Cyran, Carissa[Cyran.Carissa@epa.gov]; Rush, Alan[Rush.Alan@epa.gov]
From: Henigin, Mary
Sent: Tue 5/30/2017 4:17:54 PM
Subject: RE: Proposed Conditional Approval of Imperial County New Source Review Rule 207 – – request for expedited Federal Register publishing (Consent Decree Deadline for FINAL action July 31, 2017)

Good afternoon Amy, what we know is the EPA FR staff has finished their review of the proposal and we await the Admin's office approval to move it forward for publication (all are aware of the time sensitivity). We will continue to keep tabs and update you.

Thank you

Mary

From: Cyran, Carissa
Sent: Tuesday, May 30, 2017 11:38 AM
To: Zimpfer, Amy <Zimpfer.Amy@epa.gov>; Henigin, Mary <Henigin.Mary@epa.gov>
Cc: Rios, Gerardo <Rios.Gerardo@epa.gov>; Nguyen, Thien Khoi <nguyen.thien@epa.gov>; Yannayon, Laura <Yannayon.Laura@epa.gov>; Christenson, Kara <Christenson.Kara@epa.gov>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>
Subject: RE: Proposed Conditional Approval of Imperial County New Source Review Rule 207 – – request for expedited Federal Register publishing (Consent Decree Deadline for FINAL action July 31, 2017)

Hello, Amy,

I haven't heard any status updates on this FR package. I do know OP senior managment is reviewing all packages being sent to the OFR.

Mary, have you heard any updates on your end from OP?

From: Zimpfer, Amy
Sent: Friday, May 26, 2017 8:29 PM
To: Cyran, Carissa <Cyran.Carissa@epa.gov>
Cc: Rios, Gerardo <Rios.Gerardo@epa.gov>; Nguyen, Thien Khoi <nguyen.thien@epa.gov>; Yannayon, Laura <Yannayon.Laura@epa.gov>; Christenson, Kara <Christenson.Kara@epa.gov>; Henigin, Mary <Henigin.Mary@epa.gov>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>
Subject: RE: Proposed Conditional Approval of Imperial County New Source Review Rule 207 – – request for expedited Federal Register publishing (Consent Decree Deadline for FINAL action July 31, 2017)

Hello All,

Thank you for your help in securing expedited FR publishing for this rule. What is the status? We are hoping it gets published by May 31 to allow us to complete the public notice and comment period and complete a final action by the Consent Decree deadline of July 31, 2017. We have worked very closely with Imperial County Air Pollution Control District and the California Air Resources Board on this action and they support our proposal. It is non-controversial.

Please let me know if you have any questions.

Thanks again.

Amy

From: Cyran, Carissa
Sent: Friday, May 19, 2017 12:10 PM
To: Zimpfer, Amy <Zimpfer.Amy@epa.gov>
Cc: Rios, Gerardo <Rios.Gerardo@epa.gov>; Nguyen, Thien Khoi <nguyen.thien@epa.gov>; Yannayon, Laura <Yannayon.Laura@epa.gov>; Christenson, Kara <Christenson.Kara@epa.gov>; Henigin, Mary <Henigin.Mary@epa.gov>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>
Subject: RE: Proposed Conditional Approval of Imperial County New Source Review Rule 207 – – request for expedited Federal Register publishing (Consent Decree Deadline for FINAL action July 31, 2017)

Thank you Amy. OP is aware of the package.

From: Zimpfer, Amy
Sent: Friday, May 19, 2017 2:18 PM
To: Henigin, Mary <Henigin.Mary@epa.gov>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>
Cc: Rios, Gerardo <Rios.Gerardo@epa.gov>; Nguyen, Thien Khoi <nguyen.thien@epa.gov>; Yannayon, Laura <Yannayon.Laura@epa.gov>; Christenson, Kara <Christenson.Kara@epa.gov>; Zimpfer, Amy <Zimpfer.Amy@epa.gov>
Subject: Proposed Conditional Approval of Imperial County New Source Review Rule 207 – – request for expedited Federal Register publishing (Consent Decree Deadline for FINAL action July 31, 2017)

Hi Mary, Amber, Josh and Cyran

As per my voicemail to Mary yesterday and my discussion with Amber this morning, today Region 9's Acting Administrator Alexis Strauss signed two actions that need expedited publishing in the Federal Register. this will allow us to provide notice and comment, respond to comments and complete final action by the **consent decree deadline of July 31, 2017**. I wanted to reiterate a couple of key points:

- Regarding rule 207, this proposed action conditionally approves a local rule submitted as a revision to the Imperial County Air Pollution Control District (ICAPCD or District) portion of the California State Implementation Plan (SIP). This rule revision concerns a New Source Review (NSR) permitting rule that regulates construction and modification of stationary sources of air pollution. The rule revision updates the SIP consistent with local rules and adds new provisions for the regulation of $PM_{2.5}$.

- Action on this rule is required by a consent decree that resolves a lawsuit filed by the Center for Biological Diversity, as represented by Robert Ukeiley, on July 21, 2016 regarding various Clean Air Act (CAA) deadlines. The consent decree, which was entered on January 19, 2017, requires a final rulemaking action no later than July 31, 2017.

- We are proposing to conditionally approve Rule 207 because it does not regulate ammonia as a $PM_{2.5}$ precursor, as required by 40 CFR 51.165(a)(13). The District has provided a commitment letter to remedy the single identified deficiency. The District does not anticipate any new major sources of ammonia in the near future and is comfortable making these changes.

- If the District fails to comply with their commitment letter, this conditional approval will convert to a disapproval and start an 18-month clock for sanctions under CAA section 179(a)(2) and a two-year clock for a federal implementation plan (FIP) under CAA section 110(c)(1).

- We have worked closely with the Imperial County Air Pollution Control District and the California Air Resources Board on this action and they support the proposal.

- We are concurrently finalizing our proposed approval of Rules 204 and 206.

•□□□□□□□□ We expect no adverse reaction from the public, as these revisions will update the federal NSR program for this area. We are providing a 30-day public comment period.

Schedule:

1. Proposal signed May 19, 2017.

2. Publication in the Federal Register: May 25-31

3. 30-day comment period starts upon publication.

4. Public comment period closes: June 25-30.

5. Region 9 prepares final action and response to comments (if needed).

6. Regional Administrator signs final action: July 31, 2017.

Thanks for your help on this. If you have any questions, please call me at 415.947.4146 or Gerardo Rios at 415.972.3974.

Amy

Amy Zimpfer, Associate Director

USEPA, Region 9, Air Division

zimpfer.amy@epa.gov

+1 415.947.4146

Sent from my iPhone

To: Koerber, Mike[Koerber.Mike@epa.gov]
From: South, Peter
Sent: Tue 10/3/2017 12:44:59 PM
Subject: ONGOING ISSUES
Ongoing OAQPS issues 9_25_17.docx

Ongoing OAQPS Actions/Issues

Ozone designations for 2015 standard (Statutory Date = Oct 1; confirm signature on Sept 29)

- 68 letters: Drafts given to Mandy on Sept 15, Jan on point
- 3 FR notices:
  (1) designating 85% of county as "unclassifiable/attainment" (final action)
  AQPD sent WOPS final package on 9/21
  (2) deferring designations for 15% of country (final action)
  AQPD sent WOPS final package on 9/21
  (3) Classifications rule (supplemental proposal)
  AQPD sent OMB package on 9/20 (Mike sent Josh draft on 9/20 (in am)

  ON HOLD

Nutritional Yeast Final Rule (significant) – (CD date = Oct 1; confirm signature on Sept 29) – sent to OMB on Sept 6. SIGNED

Summary: finalizes RTR for Manufacturing of Nutritional Yeast source category regulated under NESHAP. Also revises form of VOC standards for fermenters, removal of option to monitor brew ethanol, inclusion of ongoing relative accuracy test audit, and revises other monitoring, reporting, and recordkeeping requirements.
Risk levels are acceptable and existing rules protect health with an ample margin of safety. Also conclude that there are no improvements in technologies, processes or practices that would result in further significant or cost-effective emission reductions.

Pulp & Paper Final Rule (nonsignificant) – (CD date = Oct 1; confirm signature on Sept 29) – currently in OAR-IO; Sara signed on 9/12 (waiting for OGC concurrence). SIGNED

Summary: finalizes RTR for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills regulated under NESHAP. Also revises opacity monitoring provisions; adds requirements to maintain proper operation of ESP automatic voltage control (AVC), conduct 5-year periodic emissions testing and submit electronic reports; revises provisions addressing SSM; and technical/editorial changes.
Risk levels are acceptable and existing rules protect health with an ample margin of safety. Also conclude that there are no improvements in technologies, processes or practices that would result in further significant or cost-effective emission reductions.

POTWs Final (nonsignificant) – (CD date = Oct 16) – currently in OP (sent on 9/12)

Summary: finalizes RTR for POTW source category regulated under NESHAP. Also taking final action addressing revised names and definitions of subcategories, revised regulatory provisions pertaining to emissions during SSM, initial notification requirements for existing Group 1 and Group 2 POTW, requirements for electronic reporting, and other miscellaneous edits and technical corrections.
Risk levels are acceptable and existing rules protect health with an ample margin of safety. Also we did not identify any developments in new technology as part of the technology review. Therefore, we are not finalizing any revisions to the NESHAP as a result of the RTR.

Oil & Gas

Summary: In June 2017, EPA proposed 3-mo stay and 2-year stay of (1) fugitive emissions, (2) pneumatic pump and (3) professional engineer certification requirements of 2016 O&G NSPS (comment periods closed on August 9, 2017).

- 2 NODAs at OMB awaiting clearance (will change compliance date)
- ANPRM – draft outline given to Mandy on Sept 7; currently drafting FR notice with delivery date of early Oct (note: ANPRM to be issued at same time as final stay)
- Reconsideration of O&G NESHAP RTR Final Rule: Letter to Earthjustice and subsequent motion to govern proceedings are the first two steps of a strategy to reconsider the rule, and to have the litigation on the rule continue to be held in abeyance (by October 10, 2017, we will submit a motion to govern, requesting that the court continue to hold the case in abeyance during reconsideration of 2 issues). Meeting scheduled on 9/25 with Mandy/Justin S (one pager and letter sent up on 9/21 in prep for meeting).
- RESCHEDULED TO 10/4

Landfills

Summary: EPA is reconsidering several issues in 2016 final rules for Municipal Solid Waste (MSW) Landfills NSPS and EGs. In May 2017, EPA granted reconsideration to petitions on various issues. On May 31, 2017, the EPA issued a 90-day stay on the 2016 NSPS and EG. Because this 90-stay expired on August 29, 2017, the 2016 rules are currently in effect.

- Draft text for posting on website, along with information for Regions
- OGC evaluating legal basis for "one and done" approach – i.e., basis to undo EGs
- 2 proposed stay actions at OMB awaiting clearance (note: not likely to go forward)

CPP

- NPRM – rescission notice at OMB awaiting clearance
- ANPRM – replacement notice (note: goal is to issue ANPRM along with NPRM by Oct 7)
- RIA (for NPRM rescission) – draft plan provided to OMB on Sept 14, draft RIA expected Sept 22
    - Erika plans to send Pete RIA on Friday, 9/22; Pete will send to Josh (cc Peter T).
    - Pete send OMB email with interagency comments to Josh, cc Steve and Peter T noting long list and that Peter T will be calling Sarah to discuss.
    - Draft RIA to OMB on Wed (sent draft ES to Sarah on Tuesday for review).

PETER SENT UP CPP NPRM DRAFT ON 9/30; POSSIBLE RELEASE ON THUR??

Other Actions/Issues

SO2 Designations – letters to petitioners (SIPC, Luminant; not TCEQ)) to be issued by Sept 22(?)
Summary: Response will be signed by Administrator. Response will note that EPA will revise designations (will not include rationale, etc.) and will be signed by Administrator. Plan to get draft version of letters to Mike today (9/19) and up to Sarah on 9/20.

Title V Fee Guidance – state comment period open through Sept 20; received extension from OIG for 2 months (Mike Jones request extension on 9/21; received response from Marc Vincent on 9/21

confirming)—Done for now

Texas Regional Haze – NFRM by Region 6 (CD deadline of Sept 30)
Summary: Region 6 developed final rule which includes a FIP. Texas will not be supportive.

NSR DTE Memo—deliver draft memo on DTE by end of Sept/early Oct
Summary: Ongoing OECA issue relating to NSR applicability.
On 9/27, OGC requested more time to review.
Steve asked Sarah if OK to request ext to 10/4. Sarah agreed 10/4 OK TO RECEIVE DRAFT

Woodheaters Report to Congress – draft report under development (due date is early November)
Summary: OID working on Woodheater RTC. OID will be meeting via call with OCFO on Sept 26. Chebryll on point.
Adam reported it was a quick meeting. We agreed to provide a cover letter and short report, possibly only 1-4 pages, to the appropriations committee. Most of the meeting we discussed format and what to include in an appendix. OID plans to have draft to Martin by 9/29.

RELATED: OID met with our RWH NSPS attorneys, Scott Jordan (OGC) and Simi Bhat (DOJ), late last week. See Chebryll's summary of meeting. Simi communicated that she needs a decision from EPA on the PFI-related questions by October 6th if possible. This would give her time to communicate EPA's positions to PFI, negotiate if appropriate, while still giving them time to prepare their legal briefs by the Nov 20 deadline if talks break down. Simi also indicated that she is prepared to brief up to the DOJ politicals so they can prod the EPA politicals, if we haven't heard any definitive response by mid-October and we think it will help the situation.

1-on-1 Follow-ups

- Update to SIP backlog—Mike sent SIP paper to Sarah on 9/18 (updated paper that we used to brief Ryan J in June)—Done
- CISWI/OSWI—Mike gave Sarah heads up at 9/18 1-on-1--Done
  Summary: Sierra Club filed lawsuit in December 2016 claiming EPA failed to promulgate federal plan for CISWI by March 2013, and promulgate federal plan and conduct technology review for OSWI by Dec 2010. Sarah to raise with Mandy—MEETING MOVED TO 10/5
- SIP backlog issue (okay to issue disapprovals) – Mike raised with Sarah at 9/18 1-on-1, Sarah to raise with Mandy
  - iSIP disapprovals—table of 12: Vera noted on 9/20, not 12 SIP disapprovals—prob more (in process)—Mike said to hold on 9/21
- NAAQS related sanctions—Mike gave Sarah heads up at 9/18 1-on-1—Done for now
  - Oct 18, mandatory offset sanctions in effect for 5 areas—4 in PA and 1 in LA, know more on 10/2 (no real impact—states expected to submit plans soon)
  - PREBRIEF FOR STEVE ON 10/5

- Petition on CAFOs – Sarah to raise with Mandy—Mike sent Sarah one pager—Done for now
- O&G FIP Minor Sources in Indian Country—Mike made edits to Chris's materials and sent to

Chris—Chris will get back to me with materials for 10/3 meeting—Get final materials from Chris on 9/29; make sure Mike's edits (issue #5—see attached letters from State of UT and UTE Indian Tribe—Mike sent me email with attachments on 9/21—MEETING MOVED TO 10/5

Ongoing Issues

Friday email from Sam Coleman to Sarah, others: Mandy proposed that we plan to set a meeting with EPA, AR and Entergy. The purpose is to talk through the remaining issues that are holding up the SIP N

OID met with our RWH NSPS attorneys, Scott Jordan (OGC) and Simi Bhat (DOJ), late last week. Attached is the summary of what was discussed at that meeting. Simi communicated that she needs a decision from EPA on the PFI-related questions by October 6th if possible. This would give her time to communicate EPA's positions to PFI, negotiate if appropriate, while still giving them time to prepare their legal briefs by the Nov 20 deadline if talks break down. Simi also indicated that she is prepared to brief up to the DOJ politicals so they can prod the EPA politicals, if we haven't heard any definitive response by mid-October and we think it will help the situation.

Mandy requested petitions received on Brick/Clay Ceramics MACT: OGC responded with Per your request (relayed to me from Gautam), here are the relevant materials and some information on the Brick/Clay Ceramics MACT rule reconsideration petitions: In December 2015, after the rule was published and concurrently with their petitions for judicial review, each of the industry petitioners (Brick Industry Association, Tile Council of North America and Kohler) filed a petition for reconsideration. In May 2016, EPA sent letter responses and published a notice in the Federal Register. The responses denied reconsideration on all issues, except for a grant of reconsideration on one of Kohler's claims (concerning the location for temperature measurement as an operating parameter for demonstrating compliance with the dioxin/furan emission limits). Following the denial letters, BIA (but not the Tile Council or Kohler) filed a petition for judicial review on the reconsideration denial, and that case was consolidated with the challenges to the rule. Peter noted: We may want to note that the brick industry recently asked if we were willing to have settlement discussions and if yes, would we ask the court to hold the case in abeyance. LETTER SENT UP AND SIGNED ON 10/2

SSM & the Regions: Kristi noted on 9/26 that Justin provided approval to explain to the ADDs that we are exploring options to reconsider the SSM SIP call, the general direction we've been given, and let the ADDs know we intend to brief Mandy and others soon and, depending on how that goes, we may be reaching out to the Regions soon to seek specific information regarding the history and more specific content of the SIP-called provisions. SSM PRE-BRIEF FOR STEVE ON 10/5, DE RACT SIP ON 10/4 (STEVE DOES NOT NEED PRE-BRIEF FOR DE MEETING)

To: Koerber, Mike[Koerber.Mike@epa.gov]
From: Henigin, Mary
Sent: Mon 11/20/2017 3:47:31 PM
Subject: OAQPS Petition Inventory
Revised Petition Inventory.docx

Mike, as requested.

Mary

OAQPS Petition Inventory

11/18/17

Date Received	Petitioners	Related Statutes	Petition Type	Title/Description	Current Status	Copy in DC?
DESIGNATIONS						
3/15/17	Texas Commission on Environmental Quality	**CAA 307(d)(7)(B**	Administrative Stay	**Air Quality Designations for the 2010 SO2 Primary NAAQS – Round 2 Final Rule**	Petition was received on 3/15/17 via email. Acknowledgement letter was prepared and signed on 4/7/17. Review of the petition in progress	✓
6/14/17	Southern Illinois Power Coorperative	**CAA 307(d)(7)(B**	Error Correstion		Petition dated 6/14/17 was received by OAQPS. Acknowledgment letter was prepared and signed on 7/13/17. Administrators signed a letter to SIPC on 9/21/17 indicating we will undertake an administrative action with a notice and comment to revisit the NA designations for the Williamson Co., IL area.	✓
2/13/17	Vistra Energy Corp and Luminant	**CAA 307(d)(7)(B)**	Administrative Petition for Reconsideration and Stay	**Air Quality Designations for the 2010 SO2 Primary NAAQS for Four Areas in Texas (Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County**	Petition for reconsideration and stay from Vistra Energy and Luminant dated 2/13/17 was received by OAQPS. Acknowledgment letter to Vistra Energy/ Luminant was signed on 2/24/17. Administrators signed a letter to Vistra on 9/21/17 indicating we will undertake an administrative action with a notice and comment to revisit the NA designations for the portions of Freestone and Anderson Counties, Rusk and Panola Counties and Titus Country.	✓
	Luminant Petitioners (2/10/17)		Petition for Review			
	State of Texas (2/10/17)		Petition for Review			
7/5/17	American Lung Assoc., Clean Air Council, National Parks Conservation Assoc., Natural Resources Defense Council, Physicians for Social Responsibility, Sierra Club,and Western Harlem Environmental Action	**CAA 307(d)(7)(B)**	Administrative Petition to Stay; pending judicial review, EPA's action to extend the designations deadline.	**Air Quality Designations for the 2015 Ozone NAAQS**	Petitions dated 7/5 7/10 and 7/11 were received by OAQPS. Acknowledgement letters were signed 7/21. On 8/2/17, EPA withdrew its action to extend the designations deadline. (82 FR 37318, 8/10/17)	✓
7/10/17	American Public Health Association					✓
7/10/17	Environmental Defense Fund					✓
	Ohio Environmental Council					

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7/11/17						
HAP LISTINGS/VOC EXEMPTIONS						
11/30/12	Halogenated Solvents Industry Alliance (HSIA)	CAA 112(b)	Administrative Petition	**HAP Listing Petition: To add n-Propyl Bromide (nPB) to the Sec. 112(b) HAP List (SAN 5562)**	The petition has been determined to be complete and a notice of receipt of a complete petition was signed 1/21/15 and published in the FR on 2/6/15, addressing both the HSIA and the NY state petitions. On 1/9/17, EPA published a draft FR notice of the rationale for granting petitions to add n-propyl bromide (nPB) to the list of hazardous air pollutants (HAP) contained in section 112(b)(1) of the Clean Air Act (CAA). The comment period was extended to 10/1/17. EPA is in the process of reviewing comments received on the draft notice.	
12/05/12	NY State					
3/2009	Sierra Club	CAA 112(b)	Administrative Petition	**HAP Listing Petition: To add Hydrogen Sulfide to the Sec. 112(b) HAP List (SAN: 5585)**	We have been waiting for Sierra Club to send a supplement to this petition since 2012. No action currently required. This is currently on hold pending the resolution of higher priority work. However, once we are able to dedicate more staff to this petition the findings of the technical review will be presented to OAQPS management and the OAR AA to determine final course of action, which would be a decision to either grant or deny the petition to delist MDI the HAP list. At this point, we are well past the statutory timeline (action by 2007) we are required to make a determination to either grant or deny the petition within 18 months of receipt of a complete petition. We could be sued for a decision date in courts, but ACC has not indicated a desire to do so. This petition was last reviewed in March 2006 and is now out of date. Future work is not currently planned on this action and would need to consider additional data and information, any additional comments, conduct a technical review of the evidence submitted by the petitioners and determine appropriate disposition of the petition.	
12/26/02	American Chemical Council (ACC)	CAA 112(b)	Administrative Petition	**HAP Delisting Petition: Methylene Dipheyl Diisocyanate (MDI) from the Sec. 112(b) HAP List (SAN4782)**		
09/21/09	Humane Society of US; Assoc. of Irritated Residents; Center on Race, Poverty and the Environment; Clean Air Task Force	CAA 111	Rulemaking petition	**EPA should list animal feed operations as a stationary source and regulate for methane, nitrous oxide, H2S and ammonia.**	Lawsuit seeking to compel EPA to respond to 2009 petition for regulation of concentrated animal feeding operations as a stationary source under CAA section 111 was received on 9/11/16. The District Court dismissed the lawsuit due to plaintiff's failure to provide statutory 180-day notice required under CAA section 304(a). On 10/7/16, the plaintiff's refiled the NOI with the proper 180-day notice, and we received a lawsuit on 9/5/17. A response was due by 11/6/17. Overall response is that we must complete NAEMS to determine if CAA section 111 regulations are appropriate. Sr. Leadership working to resolve NAEMS schedule. ORD hired a 4-year term employee on 1/9/17, to work on NAEMS. Currently working on Quality Assurance Project Plan (QAPP). Timeline will be finalized once QAPP is completed, early 2018.	
9/10/10	Sierra Club					
5/13/14	Earthjustice	CAA 112(n)(4)(B)	Petition for Rulemaking	**EPA should list oil and gas wells and associated equipment as an area source category and promptly set national air toxics standards to protect public health.**	Currently reviewing the petition to determine the path forward.	✓

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3/21/16	National Association of Clean Air Agencies	Petition under CAA 112(c)(1)	Petition for Review	**Request to review source category list under 112(c), including methyl bromide (MeBr) fumigation**	OGC views letter as petition under 112(c)(1). Letter points to NACAA web link of over 40 potentially new major source categories or subcategories, including MeBr fumigation, that EPA should review for possible addition to the major source category HAP list. The last review of the major source category list was in 2005. The 112(c)(1) provisions required the Administrator to republish the major source category list every 8 years (or sooner), revising "…if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area source …" Met with NACAA 6/23/16, to discuss the basis for the table of sources of HAP referenced in their letter. We continue to follow up with state contacts identified with the listed sources.	✓
7/29/02	Kowa American Corp. (prior: Occidental Chemical Company)	CAA 302(s)	Administrative Petition	**Request to exempt Benzotrifluoride from the VOC definition (SAN 5707)**	Currently on hold. This chemical is imported and at this time, we do not have enough info on the chemical. Withdrawn via Reg Agenda 6/1/17.	
1/22/98 8/8/00 7/24/01 2/8/08	BASF (prior: Chemical Manufacturers Assoc. and American Chemistry Council)	CAA 302(s)	Administrative Petition	**Request to exempt both Methylene diphenyl diisocyanate (MDI) and Toluene Diisocyanate (TDI) from the VOC definition**	Currently on hold and action deferred for HA status and MACT in place.	✓
7/19/96 4/21/08	Arysta Chemtura	CAA 302(s)	Administrative Petition	**Request to exempt Methyl Iodide (and Possibly Methyl Bromide) from the VOC definition. (SAN 5269)**	On hold at the request of the petitioner. Methyl Iodide has a 1/16/2013 EPA Order Notice for Cancellation, voluntarily requested by the registrant and accepted by the Agency, of products containing iodomethane, pursuant to the FIFRA.	✓
12/14/11	Invista	CAA 302(s)	Administrative Petition	**Request to exempt – Dimethyl (DMG) and Dimethyl Succinate (DMS) from the VOC definition. (SAN 5759)**	Requested additional info; additional info received. Withdrawn via Reg Agenda 6/1/17. Information submitted is not enough to grant. Petitioner may withdraw. Currently on hold.	✓
7/30/08	Metam Sodium Alliance (Amvac Chemical Corp., Tamico, Inc. and Tessenderlo Kerley, Inc.)	CAA 302(s)	Administrative Petition	**Request to exempt Methyl Isothiocyanate from the VOC definition.**	Petition on hold at the request of the petitioners.	✓
2/11/10 7/5/11	Responsible Farmers Coalition (RFC) Supplemental	CAA 302(s)	Administrative Petition	**Request to exempt Metam Sodium from the VOC definition.**	Petition on hold at the request of the petitioners.	✓
2/4/14	DuPont Chemicals & Fluoroproducts -	CAA 302(s)	Administrative Petition	**Request to Exempt 1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z) from the VOC definition. (6022)**	3/27/17 – Tiering and non-significant determination underway for a Parallel Proposal and Direct Final action to be signed Nov. 2017.	✓
8/25/15	Chemours Chemical Company	CAA 302(s)	Administrative Petition	**Request to Exempt Methyl-Perfluoroheptene-ethers (MPHE) from the VOC definition.**	This is currently under evaluation for tiering.	✓
11/30/16	Chemours Chemical Company	CAA 302(s)	Administrative Petition	**Request to Exempt (2E)-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-E) from the VOC definition.**	This is currently on hold. It is under evaluation for acceptability under SNAP.	✓
7/21/2017	Honeywell	CAA 302(s)	Administrative Petition	**Request to exempt (Z)-1-chloro-3, 3, 3-trifluoro-1-propene, HCFO-1233zd(Z) (cis-1233zd(Z))**	This is currently under evaluation for tiering.	✓
NAAQS						

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10/27/15	States – AZ, AR, NM, ND, OK	CAA 108, 109	Petition for Review	**Ozone NAAQS (5306)**	12/14/15 – Submitted Certified Index to Administrative Record signed by Erika Sasser. Final briefs by 9/20/16; oral arguments due April 19, 17.	
10/26/15	Murray Energy					
	Sierra Club; Physicians for Social Responsibility; and other environmental groups					
	US Chamber of Commerce; NAM; API; UARG; and other industry groups					
	TX; TCEQ					
7/7/16	Center for Biological Diversity and Center for Environmental Health	CAA 108, 109	Complaint for Declaratory and Injunctive Relief	**SO_2 and NO_2 Primary NAAQS (SO_2 SAN 5747; NO_2 SAN 5622)**	Proposed Consent Decree (CD) published 12/6/16 w/comments due by 2/16/17. CD approved - establishes the following dates: NO2 proposed rule 7/14/17, final rule 4/6/18; SO2 proposed rule 5/25/18 and final rule 1/28/19. NO2 NPRM signed 7/14/2017 and published 7/26/2017 at 82 FR 34792.	
4/5/11	Environmental Integrity Project (on behalf of a large group of petitioners)	CAA 108 and 109	Petition for Rulemaking	**CAA 108 and 109** (The EPA should make an endangerment finding and list ammonia as a criteria pollutant under CAA section 108, and issue primary and secondary NAAQS to regulate ammonia under CAA section 109.	Petition received on April 5, 2011. Unreasonable delay complaint filed on January 28, 2015. Case dismissed by US District Court for the District of Columbia on January 28, 2015. February 1, 2016, Notice of Intent to Sue under CAA section 304(a), based on the allegation that the EPA had unreasonably delayed. November 4, 2016, files unreasonable delay complaint. January 17, 2017, plaintiffs voluntarily dismissed their unreasonable delay suit. OGC Attorney Leah Anderson.	
NSR						
7/2/07	NRDC	CAA 169	Administrative Petition for Reconsideration and Stay of Final Rule	**PSD, NSR and Title V: Treatment of Certain Ethanol Production Facilities Under the "Major Emitting Facility Definition" (Corn Milling/ Ethanol Rule)**	No action has been taken on the reconsideration. due to lack of resources and other priorities. No immediate steps planned at this time.	✓
3/02/09						
2/15/08	State of NJ	Title I parts C & D	Administrative Petition for Reconsideration and Stay of Final Rule	**NSR Reasonable Possibility Rule (SAN 5076.1)**	Rulemaking is not part of current rulemaking priorities. No immediate steps planned at this time.	No
1/30/09	NRDC	Title I parts C & D	Administrative Petition for Reconsideration and Stay of Final Rule	**Project Aggregation Rule (SAN 4793.2)**	Rulemaking is not part of current rulemaking priorities. Status quo acceptable to all offices - no action planned	No
2/17/09	NRDC	CAA 302(j)	Administrative Petition for Reconsideration and Stay of Final Rule	**NSR Fugitive Emissions Rule (SAN 4940.2)**	We have indefinitely stayed the 2008 Fugitive Emissions Rule. Further, rulemaking is not part of current rulemaking priorities. No immediate steps planned at this time.	No

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12/20/10	Texas CEQ	Sections 165(a)(3) and 165(e) of the Clean Air Act	Administrative Petition for Reconsideration and Stay of Final Rule	**Ozone and Fine Particulate Matter (PM2.5) Significant Impact Levels (SILs) for Prevention of Significant Deterioration (PSD) Program (SAN 5594)**	Draft interim guidance (SAN 554.1) was posted to the NSR website on 8/1/16. Corrections were made on 8/18/16 and the new revised draft guidance was reposted to the web. Comment period closed on 9/30/16. On 7/17, draft final guidance was submitted to OAQPS IO for review. Projected to be finalized later in 2017.	No
12/17/10	Sierra Club					
6/30/15	American Petroleum Institute (API)	CAA 301(d)	Petition for Review	**General Permit/Permit by Rule in Indian Country – 5 Source Categories (Bundle 1) (SAN 5542)**	Temporarily on hold – waiting on how the Endangered Species Act and National Historic Preservation Act issue unfolds in the oil and gas rule FIP. May be merged with other petition on that rule.	
8/2/2016	American Petroleum Institute (API)	CAA 301(d)	Petition to Revise Rulemaking	**Oil and Gas FIP in Indian Country (SAN 5727)**	Petition in review. API submitted a list of FIP issues and recommended solutions. Case held in abeyance until 10/30/17.	✓
9/30/2016	National Environmental Development Association Clear Air Project (NEDACAP), Air Permitting Forum, American Petroleum Institute (API),	CAA 301(a)	Petition for Review	**Amendments to Regional Consistency Regulations (SAN 5799)**	Certified index filed 11/10/2016. Motion to extend briefing deadlines filed 7/20/2017. After being granted the briefing schedule will be as follows: Petitioner brief received 8/30/2017; EPA brief 10/30/17. EPA is planning on asking for an extension until 11/20/17.	✓
SIP RULES						
6/25/07	Earthjustice (on behalf of several petitioners including NRDC)	CAA 171-179B and CAA 188-190	Administrative Petition for Reconsideration and Stay	**Implementation Rule for PM2.5 NAAQS: SIP Requirements (RFP policy for '97 PM2.5 NAAQS; Rev. to RACT economic feasibility guidance) (SAN 5477)**	Addressed in the final rule published on 8/24/16, pages 58041-2, footnote 89 and pages 58058-9 footnote 122. The petition has been addressed but we owe a response to the court and the petitioner. Three issues were addressed by this rule and the fourth issue is now moot (dealt with a transition period for reporting condensable emissions which has now ended). OGC is discussing with DOJ what EPA needs to do to update the DC circuit and respond to Earthjustice.	✓
6/25/07	See above – Earthjustice (on behalf of several petitioners including NRDC)	CAA 171-179B, CAA 181-185B and CAA 188-190	Administrative Petition for Reconsideration and Stay	**Withdr. of Presumption that CAIR or NOx SIP Call Constitutes RACT or RACM for PM and O3 NAAQS (SAN 5411)**	The EPA issued a proposed rule on June 9, 2014 but is withdrawing this action because it is no longer needed to clarify the policy on reasonably available control technology and reasonably available control measures for oxides of nitrogen or sulfur dioxide emissions from electric generating unit sources participating in regional cap-and-trade programs, including the Clean Air Interstate Rule (CAIR) and the NOx SIP Call. The policy was clarified in two separate final rules issued in 2015 and 2016: "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (80 FR 12264, March 6, 2015, at 12279) and "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements" (81 FR 58010, August 24, 2016, at 58040).	Same as above
8/22/07	National Cattlemen's Beef Association	CAA 171-179B and CAA 188-190	Administrative Petition	**Clean Air Fine Particle Implementation Rule (72 FR 20586; 4/25/07) (SAN 5477)**	Final rule published on 8/24/16 (81 FR 58010). The petition has not been addressed. OGC is coordinating with DOJ to determine next steps.	✓
6/30/11	Sierra Club	CAA 302(k)	Administrative Petition to Amend Provisions	**Call to Amend SIP Provisions Applying to Excess Emissions During Periods of SSM (SAN 5623)**	EPA responded in full to petition via final action (including SIP call) signed 5/22/15 and published 6/12/15. See next entry.	✓

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	Texas and Tennessee filed petitions individually, and another 17 states filed a petition together. On behalf of industry groups, 12 petitions were filed. Among industry petitioners are Luminant Generation, UARG, Southern Company and NEDA/CAP.	CAA 302(k)	Petitions for judicial review of SSM SIP Call	**(Continuation of above subject, i.e., Call to Amend SIP Provisions Applying to Excess Emissions During Periods of SSM (SAN 5623)**	While most of the 36 SIP-called states are developing SIP revisions, litigation of the final action is pending in the DC Circuit. By court order filed 6/21/17, petitioner Walter Coke, Inc., is granted voluntary dismissal; lead docket for consolidated remaining cases is now Environmental Committee of the Florida Electric Power Coordinating Group, Inc., No. 15-1239. By court order filed 4/24/17, case is held in abeyance, and the first of EPA's status reports (at 90-day intervals) was submitted on 7/24/17.	✓
5/13/13	Citizens for Environmental Justice and the Environmental Integrity Project	CAA 302(k)	Administrative petition combined with comment letter	**Call to Amend Texas SSM SIP Provisions (SAN 5623)**	Consider action on parts of petition not yet responded to, but not likely until litigation on the larger SSM SIP action (which includes Texas) has progressed further.	✓
3/15/17	Texas Commission of Environmental Quality	CAA 302(k)	Administrative Petition for Reconsideration and Stay	**SSM Policy Applicable to SIPs**	Petition was received on 3/15/17 via email. Acknowledgement letters was prepared and signed on 5/10/17 by Sarah Dunham. We are waiting for the Administrator decision on how to respond.	✓
4/24/15	South Coast Air Quality Management District	CAA 109; 110; 172; 181-185B; 301(a)(1) and 501(2)(B)	Petition for review of final administrative actions	**Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule (SAN 5275.2)**	Final briefs were filed in December 2016; oral arguments occurred on September 14, 2017.	✓
5/05/15	Sierra Club, Conservation Law Foundation, Downwinders at Risk and Physicians for Social Responsibility - Los Angeles	CAA 109; 110; 172; 181-185B; 301(a)(1) and 501(2)(B)	Petition for review of final administrative actions	**Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule (SAN 5275.2)**	Final briefs were filed in December 2016; oral arguments occurred on September 14, 2017.	✓
5/5/15	Sierra Club, Conservation Law Foundation, Downwinders at Risk and Physicians for Social Responsibility – Los Angeles	CAA 171-179B and CAA 188-190	Administrative Petition for Reconsideration	**Implementation of the 2008 NAAQS for Ozone: SIP Req. (80 FR 12264; 3/6/15)**	Petition dated 5/5/15 was acknowledged on 5/28/15. We granted the petition via letter on 11/5/15. We are addressing the petition in the Implementation of the 2015 NAAQS; SIP Req. final rule projected to be completed 2018.	✓
TRANSPORT						
12/23/08	WildEarth Guardians	CAA 176A	Petition for a SIP Call	**Petition to Call for the Revision of SIPs for 16 western states due to failure to attain and maintain the 2008 ozone NAAQS and to establish an interstate transport region and commission to address regional ozone issues in the West**	At this time, OAQPS is not prioritizing the response to the petitioner because the proposed CSAPR Update Rule modeling shows that for the 2008 ozone NAAQS interstate contributions to nonattainment or maintenance areas in the West is limited to a few isolated cases and a western OTR is likely not warranted.	✓
5/3/13	Sierra Club	CAA 110	Administrative Petition for Reconsideration of the Final Rule	**Approval and Promulgation of Implementation Plans; KY; 110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS**	The CSAPR Update finalized on 9/7/16 indicates the transport FIP clock and deadline that was subject to this petition for reconsideration. In that FR, we corrected the portion of the KY SIP disapproval notice by stating the FIP clock was triggered on June 2, 2014 (the date the judgement was issued by the Supreme Court) There are no planned next steps although we formally need to respond to the petition. If we want to respond, we could simply deny it because we already addressed the FIP clock in the CSAPR Update. EPA is separately working under a court-ordered deadline of 6/30/18 to approve a SIP for KY or, if necessary, promulgate a FIP.	✓

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9/3/13	Eliot, ME	CAA 126	Section 126 Petition	**Section 126 Petition from Eliot, Maine (SAN 5740.1)**	Region 1 met with the town on October 3, 2016 to discuss the recent updates and the likelihood that EPA would deny the petition given that there's no information signaling that public health or the NAAQS is being violated in Eliot. At this time there's no immediate action scheduled to respond to this petition given that NH DES is in the process of revising the permit to lower the source's SO2 emission limit.	✓
6/1/16	State of Connecticut	CAA 126	Section 126 petition	**June Section 126 Petition from State of Connecticut**	Petition dated 6/1/16 was received by the region. Acknowledgement letter was signed on 7/14/16. FR notice was published on 7/25/16 (81 FR 48348) to extend the deadline to response by 6 months (*i.e.*, January 25, 2017). On 3/9/17 and 3/10/17, respectively, EPA received NOIs to sue from CT and the Sierra Club for failure to act on the Connecticut petition (*i.e.*, EPA's extended response deadline was 1/25/17). CT filed suit on 5/16/17; EPA's initial response deadline was 7/21/17. On 7/20/17, EPA answered the CT suit and conceded failure to act in a timely manner on the CT 126 petition. Also on 7/20/17, EPA filed a brief opposing Sierra Club's motion to intervene. By 10/16/2017 EPA must respond to CT's brief that supports their claim. The EPA is in settlement negotiations to finalize action by 10/8/2018. The EPA will ask for an extension to the response deadline based on these negotiations. Review in progress.	✓
7/7/16	State of Delaware	CAA 126	Section 126 petition	**July 2016 Section 126 Petition from State of Delaware**	Petition dated 7/7/16 was received by the region. Acknowledgement letter was signed on 8/30/16. FR notice was signed on 8/15 to extend the deadline to response by 6 months (*i.e.*, March 7, 2017). Review in progress.	✓
8/8/16	State of Delaware	CAA 126	Section 126 petition	**August 2016 Section 126 Petition from State of Delaware**	Petition dated 8/8/16 was received by the region. Acknowledgement letter was signed on 9/21/16. FR notice was signed 9/19 to extend the deadline to response to the petition 6 months (*i.e.*, April 7, 2017). Review in progress.	✓
11/10/16	State of Delaware	CAA 126	Section 126 petition	**November 2016 Section 126 Petition from State of Delaware**	Petition dated 11/10/16 was received by OAQPS and an acknowledgement letter was signed 12/1/16. FR notice was published 1/3/17 to extend the deadline to respond to the petition 6 months. New deadline is now 7/9/17. Review in progress.	✓
11/16/16	State of Maryland	CAA 126	Section 126 petition	**November 2016 Section 126 Petition from State of Maryland**	Petition dated 11/16/16 was received received by OAQPS and an acknowledgement letter was signed 12/9/16. FR notice was published12/29/16 to extend the deadline to respond to the petition 6 months. New deadline is now 7/15/17. On 7/20/17, EPA received an NOI to sue from MD for failure to act on the MD petition (*i.e.*, EPA's extended response deadline was 7/15/17). On 10/04/2017, a number of environmental groups filed mandatory duty suits over inaction on the MD petition. The DOJ is reviewing when our answer will be due. Review in progress.	✓

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11/28/16	State of Delaware	CAA 126	Section 126 petition	**November 2016 Section 126 Petition from State of Delaware**	Petition dated 11/28//16 was received on 12/5/16. Acknowledgement letter was signed on 1/5/17. FR extending the deadline to response to the petition 6 months was published 1/23/17. On 3/24/17, Delaware submitted a petition for review to the D.C. Court of Appeals on the EPA's final rule to extend the deadline. New deadline to response is 8/3/17. Review in progress.	✓
12/9/13 12/17/13	Governors of 8 NE States Amended petition – added PA to the petitioner list	CAA 176A	Section 176A	**Section 176A Petition – Add the States of IL, IN, KY, MI, NC, OH, TN, VA WV and PA to the OTR**	The proposed notice (not a rule) is approved Tier 3 and OMB exempted. We proposed to deny the petition on January 11, 2016. (82 FR 6,509; January 19, 2017). Rescheduled public hearing was held in D.C. on April 14, 2017. The comment period closed on this proposal on May 15, 2017. The Chief is in OMB exempted and [illegible]	✓
EXCEPTIONAL EVENTS						
12/2/16	NRDC and Sierra Club	CAA 319(b)	Petition for Review	Petition for review of the final action, "Treatment of Data Influenced by Exceptional Events" (SAN 5708)	NRDC and Sierra Club filed petition for review on 12/2/16. Petitioners submitted revised certified index on 12/21/16. Briefing schedule: Petitioner's brief due 2/13/17 filed on 5/19/17 EPA's response was due 8/17/17.	✓
REGIONAL HAZE						
1/23/2017	State of Texas and TCEQ (Texas Commission on Environmental Quality)	CAA 169	Petition for Review	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓
3/8/17	State of Alaska	CAA 169	Petition for Review Petition for Reconsideration	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Petition was received on 3/13/17 via email. Acknowledgment letter was prepared and signed 5/1017. Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓
3/13/17	Southwestern Public Service Co., Entergy Services and Cleco Power	CAA 169	Petition for Reconsideration	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Petition was received on 3/13/17 via email. Acknowledgement letter was prepared and signed on 5/10/17. Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓
3/13/17	UARG	CAA 169	Petition for Partial Reconsideration	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Petition dated 3/13/17 was received by OAQPS. Acknowledgement letter was prepared and signed on 5/10/17. Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓
3/13/17	State of North Dakota	CAA 169	Petition for Review	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓
3/13/17	State of Arkansas	CAA 169	Petition for Review	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓
3/13/17	NorthWestern Corporation	CAA 169	Petition for Review	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓
3/10/17	Chamber of Commerce of the USA	CAA 169	Petition for Review	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓
3/13/17	Entergy Corporation	CAA 169	Petition for Review	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓
3/13/17	Southwestern Public Service Company	CAA 169	Petition for Review	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓

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3/13/17	National Parks Conservations Association et al.	CAA 169	Petition for Review	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓
3/13/17	Luminant Generation Company	CAA 169	Petition for Review	Protection of Visibility: Amendments to Requirements for State Plans (SAN 5806)	Briefed management on petitions and litigation options on 6/20/2017. We are awaiting decisions on strategy.	✓
STATIONARY SOURCE RULES						
10/28/15 12/22/15	Ameren AEP, Biogenic CO2 Coalition, Energy and Environment Legal Institute, UARG and Wisconsin	CAA 111(b)	Administrative Petition for Reconsideration	**GHG EGU NSPS – New, Modified & Reconstructed Sources (SAN 5548)**	On 4/29/16, the Administrator signed petition denial letters for all of the petitions except Biogenic CO2 Coalition. Action is deferred on the Biogenic CO2 Coalition pending further agency consideration of the underlying biomass issue. The notice was published on May 6, 2016. Challenges to the denials and judicial review of the final standards were consolidated into a single litigation. The case (*North Dakota v EPA*) has been fully briefed and oral arguments were scheduled for April 17, 2017. On March 30, 2017, the D.C. Circuit issued an order removing the case from the April 17 oral argument calendar pending disposition of EPA's motion to hold the case in abeyance. On April 4, 2017, the EPA announced that it is reviewing, and if appropriate, will initiate proceedings to suspend, revise or rescind the New, Modified, and Reconstructed Sources standards (82 FR 16330).	
	34 state and industry groups	CAA 111(d)	Administrative petitions for reconsideration	**CPP Emission Guidelines for Existing Sources (SAN 5548.1)**	On February 9, 2016, the Supreme Court stayed implementation of the Clean Power Plan (CPP) pending judicial review. The Court's decision was not on the merits of the rule. On January 11, 2017, the Administrator signed letters and a Federal Register notice announcing denial of the petitions for reconsideration except to the extent they raise topics concerning biomass and waste-to-energy, and deferring action on the petitions to the extent they raised those topics. The notice published January 17, 2017 (82 FR 4864). On April 4, 2017, the EPA announced that it is reviewing, and if appropriate, will initiate proceedings to suspend, revise or rescind the CPP (82 FR 16329). On October 16, 2017, EPA published a notice of proposed rulemaking proposing to repeal the CPP. The comment period will close on December 15, 2017. In light of that proposed repeal, the EPA submitted to OMB a draft advanced notice of proposed rulemaking to provide notice of the agency's interest in developing a rule similarly intended to reduce carbon dioxide emissions from existing fossil-fueled electric utility generating units and to solicit information for the agency to consider in developing such a rule.	
On or before 4/1/13	CIBO, API, UARG, AFPA, Eastman Chemical, Sugar Cane Coop., Florida Sugar Industry, and New Hope Power. Sierra Club	CAA 112	Administrative Petition	**NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (SAN 4884.2)**	Oral arguments occurred 12/3/15. Final court decision on litigated issues occurred 7/29/16. On 12/23/16, the court granted EPA's request and remanded some of the standards to recalculate the MACT floor. Regarding the 11/20/15, final rule correction package, on 1/21/16, environmental groups filed court petitions for review of requirements during startup & shutdown periods. The two issues are (1) startup/shutdown work practice and (2) the 130 parts per million carbon monoxide threshold. These issues were not included in the recent Boiler Court decision (7/29/16). We are awaiting the court decision on these two issues.	

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On or about 7/2/13	2 supplemental petitions from UARG, CIBO/NESD/CAP					
On or before 4/2/13	11 industry groups, 5 environmental groups	CAA 112	Administrative Petition	**NESHAP for Area Sources: Industrial, Commercial, and Institutional Boilers (SAN 4884.3/5730)**	The final rule was signed 8/23/16, and published 9/14/16 (81 FR 63112).	
On or before 4/8/13	7 industry groups; AFPA Coalition, Alaska Oil & Gas Assoc (AOGA), Waste Mgmt (WM), Portland Cement Assoc. (PCA), API, Energy Recovery Council and Eastman Chemical	CAA 111	Administrative Petition	**CISWI SAN 5105.1**	Final rule signed 5/5/2016. Inadvertent errors package signed 5/31/16. Final rule was published in the FR 6/23/16.	
4/27/12	23 Industry, state and environmental groups	CAA 111 and 112 CAA 111 and 112	Administrative Petition	**MATS Reconsideration SAN 5663, New source EGU Limits (Signed 3/28/13)** **SAN 5663.1 Startup/Shutdown Issues (Signed 11/7/14)**	Technical Corrections NPRM published 2/17/15 (80 FR 8442). The final rule published 4/6/16 (81 FR 20172). The agency previously granted reconsideration on several discrete issues and took final action on reconsideration through documents published in the Federal Register on April 24, 2013, and November 19, 2014. The EPA denied the 23 remaining petitions for reconsideration of the final MATS rule in a noticed published on April 30, 2015 (80 FR 24218). The denials were challenged in the D.C. Circuit Court. The case has been fully briefed and oral arguments have been scheduled for May 18, 2017 (on the same date and by the same panel as the challenge to the 'Consideration of Cost' case). The U.S. Court of Appeals for the D.C. Circuit remanded the rule without vacatur back to EPA to address the cost issues raised by the USSC. In that decision, the DC Circuit reiterated EPAs intent to finalize a rule addressing the cost consideration issues by April 15, 2016 (court promised deadline). We completed the final finding April 14, 2016. Published 4/25/16 (81 FR 24420). The Finding was challenged in the D.C. Circuit Court. The court granted EPA's request to postpone oral arguments so that EPA could fully review the supplemental cost finding. Regarding the two petitions from UARG and Environmental Integrity Project on startup and shutdown, denial letters were signed 7/29/16, and published a Federal Register denial notice 8/8/16 (84 FR 52346) announcing the denials. MATS litigation on startup and shutdown is on hold pending the outcome of the Boilers startup and shutdown.decision.	
1/20/15	UARG and Environmental Integrity Project	CAA 111 and 112 CAA 112(c) and ((d)	Administrative Petitions on Startup/Shutdown final rule	**SAN 5802 Technical Correction FNL (Signed 2/2016)** **SAN 5869 Cost finding FNL, (Signature 4/2016)**		
4/1/13	Calpine/PSEG, Del. NREC, Clean Air Council et al	CAA 111 and 112	Administrative Petition	**NESHAP for RICE Petition for Administrative Reconsideration (SAN 5300.3 and 5864)**	On 8/14/15, the court granted EPA's motion to stay issuance of the court's vacatur until 5/1/16. Vacatur issued 5/4/16.	
9/10/13	Institute of Clean Air Companies					
1/20/14	Kauai Island Utility Cooperative					

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9/7/06	UARG	CAA 111	Administrative Petition	**NSPS: Stationary Combustion Turbine (Subpart KKKK) – (SAN 5116.1)**	Since proposal, industry has not expressed an interest in finalizing. Project on hold.	
10/15/12	API, NRDC et al, California Comms, et al, TxOGA, TCEQ, IPAA & 6 others, ANGA/AXPC, EarthJustice, INGAA, REM Technology	CAA 111 and 112	Administrative Petitions and Judicial Petitions	**Oil and Natural Gas Sector – NSPS and NESHAP Reviews SAN 5369, SAN 5719, 5719.1 and SAN 5732**	**NSPS:** Evaluating the petitions to determine the path forward. As of 1/4/17, the Court granted 30 days to file motions for schedule. Schedule briefs for litigation are due 3/20/17. At OGC request, a clarification notice and letters have been drafted, explaining that the denial only concerned NSPS issues. The letters and FR notice were signed 9/26/16. Requested and granted an additional 60-day extension for filing schedule briefs. These are now due 5/19/2017. Published a FR Notice indicating that the EPA would review the Oil and Gas NSPS and, if appropriate, initiate reconsideration proceedings to suspend, revise or rescind the rule on April 4, 2017. Sent a letter convening a proceeding to reconsider fugitive emissions monitoring to four litigants on April 18, 2017. Published a 90-day Administrative stay of certain requirements, including fugitive emissions monitoring, on 6/5/17. Published proposed 90-day stay and 2-year stay rules extending the stay of certain regulatory requirements, including fugitive emissions monitoring requirements on 6/22/17. Sent NODAs on 3-month and 2-year stays to OMB for interagency review on 9/22/17. **NESHAP:** We granted reconsideration on two issues on October 6, 2017. Motions to the court to hold the case in abeyance were filed by EPA on October 10, 2017.	
11/22/13 August 2016	API API, Clean Air Council, et al., GPA, IPAA, et al., TXOGA	CAA 111 CAA 111	Administrative and Judicial Petitions			
2/19, 24 & 27/15	GPA, M-Squared, TxOGA, API, TPA, & Western Energy Alliance;			**Oil & Gas NSPS 1.5 SAN 5719, 5719.2**	Final rule for storage vessel definition was published 8/12/15 (80 FR 48262).	
12/19/12	Environmental Defense Fund	CAA 185	Administrative Petition	**Oil and Natural Gas Sector – Issue Control Techniques Guidelines for Oil and Natural Gas Operations in Non-Attainment Areas (SAN 5722)**	The final CTG notice cleared OMB 10/19/16, and was signed 10/20/16. The notice published 10/27/16 (81 FR 74798). Preparing a notice proposing to withdraw the CTG.	
8/25/08	EIP, NRDC, Sierra Club	CAA 111(b)	Administrative Petitions	**Petroleum Refinery Sector (Refineries NSPS Subpart J/Ja)**	2008 Petition: No further rulemaking planned. EPA must file status reports every 90 days regarding progress resolving issues in Industry Petitioners' litigation. EPA must also file status reports every 90 days regarding progress resolving issues in Enviro/States' litigation. 2012 Petition: API & AFPM still have one outstanding issue they would like for EPA to resolve through rulemaking; one issue on flare flow monitor sensitivity was resolved in the 12/1/2015 final refinery rule. 3rd issue resolved through state-issued alternative monitoring plan. Joint motion holding the cases in abeyance indefinitely. No further rulemaking planned. Filing periodic status reports.	
7/23/08	API – NPRA, WSPA					
8/21/08	API – NPRA, WSPA					
8/25/08	Hovensa					
11/13/12	API, AFPM,					

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11/13/12	Wyoming Refining Co (petition for review withdrawn)					
11/23/12	Lion Oil Co (petition for reconsideration withdrawn)					
9/27/12	Air Alliance Houston and 7 other Environmental and Community Groups	CAA 112(d) and (f)	Administrative Petitions	**Petroleum Refinery Sector (Refinery MACT 1 and 2 RTR) (SAN 5532, 5532.3, 5532.4 and 6011)**	A notice proposing reconsideration for the notice and comment issues associated with the work practice standards for emergency flares and pressure relief devices was published on October 18, 2016. The EPA plans to finalize the reconsideration in March 2018. In addition, the EPA plans to propose a notice to address other technical issues that may require regulatory changes or clarification in December 2017.	
1/19/16	American Petroleum Institute (API) and American Fuel & Petrochemical Manufacturers					
08/19/13	American Petroleum Institute (API)	CAA 112(d)	Administrative Petition	**Petroleum Refinery Sector (addresses reconsideration issues on Heat Exchange MACT requirement in Refinery MACT 1) SAN 5093.8**	On hold.	
5/27/14	Louisiana Environmental Action Network (LEAN), Ohio Valley Environmental Coalition, and Sierra Club.	CAA 112(d) and (f)	Administrative Petition for Reconsideration and Petition for Review	**RTR rule for Group IV Polymers & Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production (SAN 5566)**	Cases were consolidated, and litigation is indefinitely stayed. No rulemaking action. We are filing periodic status reports with the court.	
12/5/14	Georgia Pacific	CAA 112(d) and (f)	Administrative Petitions for Reconsideration and Petitions for Review	**RTR rule for Group III Polymers & Resins, specifically NESHAP for the Manufacture of Amino/Phenolic Resins (SAN 5612 and 5612.1)**	Cases (Georgia-Pacific and ACC) were consolidated, and litigation is indefinitely stayed. Reconsideration underway to address petition for reconsideration issues from Georgia-Pacific and Tembec regarding the dryer emission standards and to address front-end process vent petition for reconsideration issue raised by Sierra Club. Although there is no deadline associated with this action since litigation is stayed, we do need to propose and finalize reconsideration on or about the October 2017 compliance date. The reconsideration amendments were proposed on August 24, 2017. The comment period on the proposal closes October 23, 2017.	
12/5/14	Tembec					
12/8/14	SierraClub (under signature of Earthjustice)					
5/24/11	National Association of Clean Water Agencies (NACWA)	CAA 129	Administrative Petition	**NSPS/EG for Sewage Sludge Incinerators (SAN 5392)**	Final Rule signed 2/22/16, and published in the Federal Register 4/29/16 (81 FR 26040). This rule has a compliance date of March 21st. Court litigated part of the rule to us for clarification. Standards remanded in place. Verbally indicated to NACWA that we are not reconsidering 129 v. 112 issue and we would respond to the remand along with the 5-year technology review. 5-Year technology review was due in 2016.	
5/27/14	James Pew					
5/20/11	Sierra Club					
12/23/2015	Brick Industry Association, the Tile Council of North America, Kohler Company and Sierra Club	CAA 112	Administrative and Judicial Petitions for Reconsideration	**NESHAP for Brick and Structural Clay Products Manufacturing; and NESHAP for Clay Ceramics Manufacturing (SAN 5367 and 5367.2)**	Reconsideration letters mailed. FR notice published 5/18/16 (81 FR 31234). Working on reconsideration proposal. On October 2, 2017, EPA notified all interested parties that we are reviewing the provisions of the Brick/Clay Ceramics Rule. On October 3 we filed a motion to delay oral arguments on the rule which are currently scheduled for November 9, 2017.	
12/24/2015						

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3/26/04	James Pew, Sierra Club	CAA 112	Administrative Petition	**NESHAP for Integrated Iron and Steel (SAN 5919)**	In 2005, we granted reconsideration We may address at the same time we conduct the RTR. We aim to complete a draft proposal rule package (to present the results of the RTR and possible rule amendments) for OAR review in summer 2018.	
10/27, 28 and 29/16	National Waste & Recycling Assoc., Solid Waste Association of North America, Republic Services, Inc., and Waste Management Assoc.; National Green Fuels LLC; Environmental Defense Fund; Utility Air Regulatory Group; and Sierra Club	CAA 111	4 Administrative Petitions for Reconsideration and 3 Judicial Review Petitions	**NSPS and Emission Guidelines for Municipal Solid Waste Landfills (SANs 4846 and 4846.1)**	On 8/29/16, we published final new source performance standards and emission guidelines for Municipal Solid Waste Landfills. In response, we have received four administrative and three judicial review petitions. We granted reconsideration on the following topics: (1) tier 4 surface emission monitoring; (2) annual liquids reporting; (3) corrective action timeline procedures; (4) overlapping applicability with other rules; (5) the definition of cover penetration and (6) design plan approval. A 90-day stay was put in place May 31, 2017 and expired on August 29, 2017. We plan to align the reconsideration process with the residual risk and technology review of the NESHAP, which has a court order to be completed by March 13, 2020.	
8/30/10	Environmental Council of States	CAA 112	Administrative Petition	**NESHAP for Area Source Electric Arc Furnaces (steel) (SAN 5593)**	We finalized a NESHAP for area source Electric Arc Furnaces (EAFs) in 2007 that included MACT work practice standards for mercury (Hg) (based on removing Hg switches from auto scrap). In 2010the Environmental Council of States (ECOS) requested we reconsider the MACT work practice standards and consider developing a numerical MACT emissions limit. In 2011, we received Hg emissions test data from 30 EAFs. In 2012, we sent a response letter to ECOS stating that we intend to develop a MACT emission limit for Hg in the next rule review. On September 9, 2016, we sent testing requests to three EAFs which were tested in 2011 to determine if their Hg emissions have decreased commensurate with the predicted decrease of Hg switches. Recently we also learned that about five EAFs are major sources. These EAF are currently not subject to federal air toxics regulations for steel manufacturing because there is no major source NESHAP for EAF, although four of the five EAF are only major due to co-located major HAP processes, that are regulated by other NESHAP and subject to Title V. EAFs are one of the major source categories identified in the 3/21/16 NACAA petition described above. Next steps for area and major source EAFs have not yet been determined.	

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5/20/11	Sierra Club	CAA 112(c)(6)	Administrative Petition	**Wrap-up notice for 112(c)(6) and 112(k) inventories (SAN 5551)**	On 7/25/14, we received a court order for a notice and comment rulemaking in order to complete determination that we fulfilled all of the obligations under CAA section 112(c)(6). Proposal package was signed on 12/10/14 and published in the FR on 12/16/14. The final rule was signed on 5/22/15 and published in the FR on 6/3/2015. Petition for Judicial Review received 8/2015. Certified index filed. Oral Arguments were on February 10, 2017.Waiting for court decision. On July 18, 2017, the Court issued a narrow decision denying our motion to dismiss and remanded the matter to EPA for further proceedings. We are currently reviewing the decision to determine our path forward.	
8/25/15 8/28/15	Eramet, Inc. Felman, Inc.	CAA 112	Administrative petitions for reconsideration	**NESHAP for Ferroalloys Production (SAN 5417, 5417.1)**	Sent letters granting petitions on bagleak detection for positive pressure baghouses and PAH testing frequency 11/6/15. Subsequently, we also granted reconsideration of the digital camera opacity technology requirement via the proposal package. Reconsideration proposal was published in the FR on 7/12/2016. Final rule published 1/18/17 (82 FR 5401).	✓ ✓
3/17/17 4/13/17	Eramet, Inc Felman, Inc.		Administrative petitions for reconsideration	**NESHAP for Ferroalloys Production (SAN 5417.1)**	Received petitions for reconsideration and judicial review from Eramet and a petition for review from Felman, concerning the Ferroalloys Production NESHAP final rule that was published 1/18/17. The petitions seek reconsideration regarding the requirement to demonstrate compliance with shop building opacity standards using the digital camera opacity technique. We are currently evaluating the merits of the petitions and no recommendations or decisions have been made yet regarding the petitions. AQAD/MTG sent a letter on 6/8/17, to Eramet and Felman approving an alternative method request to use Method 9 instead of the digital camera opacity technique.	✓ ✓
2/5/16	Sierra Club and California Communities Against Toxics	CAA 112(d)	Administrative Petition	**NESHAP for Secondary Lead Smelting (SAN 5774)**	On January 5, 2012, we finalized the Secondary Lead RTR. On March 5, 2012, we received petitions for reconsideration from environmental groups and industry. On December 10, 2012, we granted reconsideration to present additional risk information related to our ample margin of safety analysis and make minor technical corrections. The litigation is in abeyance while we work on the reconsideration. Motions for further proceedings on judicial review were submitted to the Court on May 1, 2017. The next motion to govern is due on December 1, 2017. EPA anticipates completing the technical analyses in 2018. Subsequently, EPA plans to develop and evaluate regulatory options, brief senior managers and develop a proposed reconsideration notice and relevant supporting documentation.	✓

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11/17/15	Kaiser Aluminum Corporation	CAA 122(d)	Petition for Review	**NESHAP for Secondary Aluminum RTR Amendments (SAN 5468)**	We are working with OGC and DOJ and the litigants to discuss settling the litigation through mediation. The litigation is currently on stay pending completion of the mediation process. It is uncertain when mediation will be finished. Kaiser submitted a petition to Region 10 for an alternative approach to demonstrate compliance for new round top furnaces and Kaiser does not want to proceed with mediation with us until Region 10 acts on their petition. Nevertheless, Kaiser has previously indicated they believe the direct final rule addressed most of the issues raised in their statement of issues. There are potentially a few remaining issues (e.g., testing requirements for new round top furnaces and deadlines for submissions of dioxin test reports). Kaiser has indicated they may be willing to drop these issues from litigation. If they drop the remaining issues from litigation, Kaiser will voluntarily dismiss the action and the case will be closed. If Kaiser does not drop the litigation, and issues remain that can be resolved through a settlement, any settlement agreement will have to be made available for public comment under CAA section 113(g).	✓
12/16/16	Sierra Club	CAA 111 and 129	Complaint for Declaratory and Injunctive Relief	**Commercial and Industrial Solid Waste Incineration Units (CISWI) (SAN 5960) and Other Solid Waste Incineration Units (OSWI)**	On 12/16/16, Sierra Club filed a suit to compel the EPA to take certain actions mandated by the CAA. The EPA has missed statutory deadlines to promulgate a federal implementation plan for CISWI and OSWI. In addition, the EPA has missed the statutory deadline to review, and revise standards for OSWI units. EPA motions are due 10/19/17.	✓
12/7/09	UARG, EarthJustice	CAA 111	Administrative Petition	**NSPS: Coal Processing and Preparation (SAN 5144)**	Decision made on 3/3/10 to grant reconsideration on four issues (applicability of certain requirements to existing coal storage piles, electronic reporting of certain data, emissions from coal preparation and processing plant roadways and certain fugitive dust control plan requirements). Motions to govern further proceeding of judicial review were submitted the end of April 2014.	
1/15/08	ACC, API, and NPRA	CAA 111(b)	Administrative Petition	**NSPS: Equipment Leaks of VOC in SOCMI and Refineries (subparts VV, VVa, GGG, and GGGa) (SAN 5035.2)**	Development of proposed rule amendments on hold due to other competing schedules.	
6/17/14 10/6/14	Sierra Club	CAA 111(4), 112(2), 111, and 129(4)	Administrative Petition Supplemental Administrative Petition	**Petition to remove affirmative defense from section 111(4), 112(21), 111, and 129(4) rules.**	Response letter signed 11/19/14. Since 4/18/14, we have ceased including affirmative defense language in our rules. We will continue the ongoing process of removing affirmative defenses from the remaining rules that are the subject of this petition as expeditiously as practicable.	✓
6/17/14	Sierra Club	CAA 111, 112, and 129	Petition for Judicial Review	**Petition for Review of 111, 112, and 129 rules that contain affirmative defense. Petition claims that affirmative defense vacatur in Portland Cement case provides new basis for challenge**	Court granted motion to hold this case in abeyance to allow EPA to continue the process of removing affirmative defense from the rules at issue in the litigation (111, 112 and 129 rules). Status reports are due every 120 days and continue to be filed by OGC.	
10/15/15 10/16/15	The Fertilizer Institute (TFI) Potash Corporation of Saskatchewan (PCS)	CAA 112	Administrative and Judicial petitions for reconsideration	**NESHAP: Phosphoric Acid Manufacturing and Phosphate Fertilizer Production (SAN 5435)**	Petitioners raised three issues in their petition for reconsideration. First, PCS petitioned us to reconsider the total fluoride emission limit for calciners under the RTR for subpart AA (Phosphoric Acid Manufacturing NESHAP) because we finalized emission limits for total fluoride for calciners that were not previously proposed. Second,TFI petitioned us to reconsider the monitoring requirements for low energy scrubbers that were not previously proposed, and were made immediately effective with insufficient time to comply. Finally, TFI petitioned us to reconsider our clarification that air oxidation reactors are a part of the affected source because that did not allow them sufficient	✓ ✓

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9/6/16	Amended from PCS					
2/5/16	Aerospace Industries Association (AIA)	CAA 112	Administrative Petition for Reconsideration	**NESHAP: Aerospace Manufacturing and Rework Facilities (SAN 5561)**	Formal direct final rule & parallel proposal package signed 7/26/16, and published 8/3/16 (91 FR 51114). DFR addresses compliance oversight. We have also prepared rule guidance that clarifies our intent pertaining to "RCRA-empty" concerns and emissions estimates during deviations of the work practice standards. This guidance is now final and posted on the web. This closed out both the administrative and the judicial petitions. The judicial petition was withdrawn in August 2017.	
2/20/09	API	CAA 112(h)	Administrative Petition	**NSPS/NESHAP: Alternative Work Practice to Detect Leaks from Equipment (SAN 5364)**	Development of proposed rule amendments on hold due to other competing schedules; EPA is currently developing a protocol for the use of an optical gas imaging instrument.	
2/11/08	FutureFuels	CAA 112(d)	Administrative Petition	**NESHAP: Pesticide Active Ingredient Production (No SAN)**	In consultation with OGC, we did not respond to this petition in the proposed RTR for this rule. We received no comments on the petition and do not plan on responding to it in the near future.	
11/12/96	Arteva	CAA 112(d)	Administrative Petition	**NESHAP: Group IV Polymers and Resins (No SAN)**	In consultation with OGC, we did not respond to this petition in the proposed RTR for this rule. We received no comments on the petition and do not plan on responding to it in the near future.	
6/20/12	EarthJustice; Vinyl Institute; Mexichem; and Saint Gobain	CAA 112(d)	Administrative Petition	**NESHAP: Polyvinyl Chloride and Copolymer Production (SAN 5678)**	We have been constrained on addressing these issues due to competing priorities and resource constraints. A status report was filed with the court in mid-April. An unopposed motion to govern was filed with the court on August 16, 2017. On October 10, 2017, the court issued its order in response to the motion, requiring EPA to file a status report on January 8, 2018, and ordering parties to file motions to govern further proceedings on April 20, 2018.	
12/8/2003	Earthjustice, counsel for Sierra Club	CAA 112(d)	Administrative Petition	**NESHAP: Site Remediation (SAN 4866.1)**	We are working through the comment issues across OAR, OLEM and OGC. We do not yet have a schedule by when we can resolve the outstanding issues and move forward with a final rule package. OGC confirmed on 10/20/16 that petitioners have not contacted us since August 23, 2016, and there is currently no agreed-upon date for final action.	
5/18/2015	Eastman Chemical (petition withdrawn 9/20/16) ACC	CAA 112(d)	Administrative Petition	**NESHAP: Offsite Waste and Recovery Operations (SAN 6005)**	On September 20, 2016, counsel for Eastman Chemical sent an email to DOJ indicating that Eastman has decided to withdraw its petition for review in this case, and will no longer be a signatory to the settlement agreement, leaving only ACC. On June 15, 2017, DOJ signed and finalized the settlement agreement between EPA and ACC. Pursuant to the terms of the settlement, EPA proposed a reconsideration notice on July 27, 2017. The comment period closed September 11, 2017. The settlement calls for EPA to finalize by January 18, 2018.	
2/06/12	NSPS Subpart DD Coalition	CAA 111	Administrative Petition	**NSPS: Grain Elevators (SAN 5233)**	Formal package sent to OMB on 10/24/17. Withdrawn from OMB 1/23/17, due to three last-minute issues raised by OMB which were broader than the Grain Elevators rule itself. Management needs to address these issues w/OMB before we can resubmit the rule.	
11/09/12 11/13/12	American Forest and Paper Association (AF&PA)	CAA 112	Administrative Petition	**NESHAP: Pulp and Paper Industry (subpart S) (SAN 5469)**	Currently reviewing petition for reconsideration. Petition for judicial review stayed.	

Green Background = Low Priority
Yellow Background = Medium priority
Red Background = High priority

Pink Highlight = new petition
Red Highlight = Time Sensitive Response
Yellow Highlight = edit since last report

6/3/2014	American Forest and Paper Association	CAA 111(b)	Petition for Judicial Review	**NSPS: Kraft Pulp Mills (SAN 5638)**	Currently reviewing petition for reconsideration. Petition for judicial review stayed.	
3/16/15	Hearth, Patio & BBQ Assoc.	CAA 111(b)	Petition for Review and for Reconsideration	**NSPS for Wood Heaters (SAN 5396)**	Prepared denial letter and FR notice. Submitted Certification of Index to Administrative Record –to the Court by 6/29 (OGC wanted by 6/22/15). Reviewed Statement of Issues and Briefing Schedules; met with team to develop action plan and what to consider. Resolving issues with litigants. Burns denial letter and FR notice signed 10/14/16, published at 81 FR 72729.12/29/16-Court granted Burns' and Tulikivi's motion for voluntary dismissal. 6/13/17-new deadline dates, briefs due: petitioner – 8/25/17; respondent – 11/21/17; final due by 1/16/18.	
5/14/15 6/19/15	Tulikivi US, Inc (petition voluntarily dismissed)					
5/15/15	Pellet Fuels Institute					
5/15/15 (amended 6/2/15)	Richard S. Burns & Co (petition voluntarily dismissed)					
5/15/15	Empire Masonry Heaters					
7/8/15	Temp Cast Masonry Heaters					
EMISSION FACTORS						
10/6/16	Air Alliance Houston, Community In-Power and Development Association, Inc, Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy Services	CAA 130	Petition for Judicial Review	**Emissions Factors Petition to review and, if necessary, revise emissions factors for VOC for flares at Oil and Natural Gas Production Sites**	Om December 7, 2016 EPA entered into a Consent Decree with the litigants that requires EPA to propose, if necessary, revised VOC emissions factors for flares at oil and natural gas production sites by June 5, 2017 and to finalize, if necessary, such revised factors by February 5, 2018. In compliance with the consent decree, on June 5, 2017, EPA posted our findings with respect to the existing VOC emissions factor and proposed three new THC emissions factors for enclosed ground flares.	✓
7/10/15	Air Alliance Houston, Community In-Power and Development Association, Inc, Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy Services	CAA 130	Petition for Judicial Review	**Emissions Factors Petition to review and, if necessary, revise emissions factors for VOC, CO and NOx**	DOJ filed a joint motion to hold the case in abeyance. Under the terms of the joint motion, EPA has until December 16, 2016, to make certain revisions to the emissions factors and the language explaining those factors. EPA took final action on December 14, 2016.	✓
TEST METHODS						
9/8/15	Portland Cement Assoc.	CAA 112(b)(5)	Administrative Petition	Technical Amendments to Performance Specification 18 and Procedure 6	DF/PP in response signed 5/2/16; adverse comment received (unrelated to petition); DF partial withdrawal (PS-18) 8/8/16; Final rule (for Procedure 6) awaiting signature. Notice to deny petition to be signed after final rule is promulgated (promulgation date needed in notice). TBD	
3/20/2017	NAAQS Implementation Coalition		Administrative Petition	Revisions to the Guideline on Air Quality Models (Appendix W)	In review.	

Green Background = Low Priority
Yellow Background = Medium priority
Red Background = High priority

Pink Highlight = new petition
Red Highlight = Time Sensitive Response
Yellow Highlight = edit since last report

To: South, Peter[South.Peter@epa.gov]
From: Koerber, Mike
Sent: Tue 9/19/2017 4:18:46 PM
Subject: ongoing stuff
Ongoing OAQPS Stuff.docx

Ongoing OAQPS Stuff

Actions related to ozone designations for 2015 standard (Statutory Date = Oct 1; confirm signature on Sept 29)

- 68 letters: Drafts given to Mandy on Sept 15, Jan is our contact
- 3 FR notices: (1) designating 85% of county as "unclassifiable/attainment" (final action)
  (2) deferring designations for 15% of country (final action)
  (3) Classifications rule (supplemental proposal)

SPPD Packages – all final actions

- Nutritional Yeast (significant), (CD date = Oct 1; confirm signature on Sept 29) – sent to OMB on Sept 6
- Pulp & Paper (nonsignificant) – (CD date = Oct 1; confirm signature on Sept 29) – currently in OP
- POTWs (nonsignificant) – (CD date = Oct 16) – currently in OP

Oil & Gas

- 2 NODAs at OMB awaiting clearance
- ANPRM – draft outline given to Mandy on Sept 7, currently drafting FR notice with delivery date of early Oct (note: ANPRM to be issued at same time as final stay)

Landfills

- Draft text for posting on website, along with information for Regions
- OGC evaluating legal basis for "one and done" approach – i.e., basis to undo Emission Guidelines
- 2 proposed stay actions at OMB awaiting clearance (note: not likely to go forward)

CPP

- NPRM – rescission notice at OMB awaiting clearance
- ANPRM – replacement notice (note: goal is to issue ANPRM along with NPRM by Oct 7)
- RIA (for NPRM rescission) – draft plan provided to OMB on Sept 14, draft RIA expected Sept 22

SO2 designations – letters to petitioners (SIPC, Luminant, and TCEQ) to be issued by Sept 22??

Title V fee guidance – state comment period open through Sept 20; received extension from OIG until ????

Texas Regional Haze – NFRM by Region 6 (CD deadline of Sept 30)

NSR - deliver draft memo on DTE by end of Sept

Woodheaters Report to Congress – draft report under development (due date is early November); phone call with OCFO on Sept 26

1-on-1 Follow-ups

- Update to SIP backlog materials
- CISWI/OSWI – Sarah to raise with Mandy
- SIP backlog issue (okay to issue disapprovals) – Sarah to raise with Mandy
- Petition on CAFOs – Sarah to raise with Mandy

To: Koerber, Mike[Koerber.Mike@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
From: South, Peter
Sent: Mon 5/15/2017 3:51:39 PM
Subject: FW: Comments of Utility Air Regulatory Group, Docket No. EPA-HQ-OA-2017-0190
UARGcomments051217-c.pdf
Exhibits1to3-c.pdf

FYI

From: Knudsen, Andrew D. [mailto:aknudsen@hunton.com]
Sent: Friday, May 12, 2017 3:59 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Harvey, Reid <Harvey.Reid@epa.gov>; Page, Steve <Page.Steve@epa.gov>
Cc: Field, Andrea <afield@hunton.com>; Jaber, Makram <mjaber@hunton.com>
Subject: Comments of Utility Air Regulatory Group, Docket No. EPA-HQ-OA-2017-0190

Dear Sirs,

Attached is a courtesy copy of the Utility Air Regulatory Group's comments responding to EPA's request for input on its evaluation of existing regulations pursuant to Executive Order 13777. These comments have also been filed in Docket No. EPA-HQ-OA-2017-0190 on www.regulations.gov. If you have any questions about this matter, please contact Andrea Field at (202) 955-1558 or afield@hunton.com.

Sincerely,

Andrew Knudsen

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Associate

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May 12, 2017

Samantha K. Dravis
Regulatory Reform Officer and
Associate Administrator, Office of Policy
U.S. Environmental Protection Agency
Mail Code 1803A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Submitted via Electronic Mail and via Regulations.gov

Utility Air Regulatory Group's Response to EPA's Request for Comments on Regulations Appropriate for Repeal, Replacement, or Modification Pursuant to Executive Order 13777, 82 Fed. Reg. 17,793 (Apr. 13, 2017): Docket ID No. EPA-HQ-OA-2017-0190

Dear Ms. Dravis:

This letter is submitted in response to the U.S. Environmental Protection Agency's ("EPA" or "Agency") April 13, 2017 *Federal Register* notice[1] seeking input from the public to inform the Agency's evaluation of existing regulations that may meet the criteria outlined in Executive Order 13777[2] for repeal, replacement, or modification. More specifically, the notice asks commenters to identify regulations that, among other things, "are outdated, unnecessary, or ineffective; impose costs that exceed benefits; . . . or . . . derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified,"[3] in accordance with the language of Executive Order 13777.

The Utility Air Regulatory Group ("UARG") recommends that EPA examine whether the regulations identified below meet the criteria of Executive Order 13777. UARG is a not-for-profit association of individual electric generating companies and national trade associations. Since 1977, UARG has participated on behalf of certain of its members collectively in scores of Clean Air Act ("CAA" or "Act") administrative proceedings that affect electric generators and in litigation arising from those proceedings. UARG's 40 years of participation in CAA rulemakings and litigation has provided it unique insight as to which CAA programs are

[1] 82 Fed. Reg. 17,793 (Apr. 13, 2017).
[2] 82 Fed. Reg. 12,285 (Mar. 1, 2017).
[3] 82 Fed. Reg. at 17,793.

designed and work as Congress intended, which programs are overly burdensome or costly, and which programs are unlawful or unnecessary.

Many of the recommendations set out below are described in greater detail in materials that UARG has previously filed with EPA and reviewing courts. These materials include rulemaking comments, technical expert reports, petitions for reconsideration, and court pleadings concerning Agency actions that UARG believes to be unlawful, unjustified, or unduly burdensome or costly. UARG appreciates the opportunity to provide input on this matter and invites Agency representatives and others in the administration to meet with UARG concerning the information that we are providing today.[4]

[4] Dominion Energy does not join in these comments.

TABLE OF CONTENTS

I. Climate Change-Related Rules

A. Clean Power Plan, 80 Fed. Reg. 64,662 (Oct. 23, 2015), codified at 40 C.F.R. Part 60, Subpart UUUU

EPA has already commenced review of this rule to determine whether it is appropriate to "initiate proceedings to suspend, revise or rescind the Clean Power Plan."[5] Any replacement or revision to the Clean Power Plan under CAA § 111(d) must adhere to the statutory confines of section 111 of the CAA and must: (i) be based on a "best system of emission reduction" that can be applied at the individual electric generating units subject to the rule; (ii) adhere to the requirement of section 111(d) of the CAA and its implementing regulations that states (and EPA when it is acting on behalf of a state) be allowed to prescribe less stringent standards for certain units on an as-needed, case-by-case basis; and (iii) adhere to the requirement of section 111(d) of the CAA that the remaining useful life of the unit be taken into account. Any replacement rule should also allow for compliance flexibility. Likewise, UARG encourages EPA to acknowledge that once it has promulgated emission guidelines for a source category, the CAA does not give the Agency authority to revisit those guidelines and make them more stringent. *See* Section VI.A below.

B. Carbon Dioxide New Source Performance Standards for New, Modified, and Reconstructed Electric Generating Units, 80 Fed. Reg. 64,510 (Oct. 23, 2015), codified at 40 C.F.R. Part 60, Subpart TTTT

EPA has already commenced review of this rule to determine whether it is appropriate to "initiate proceedings to suspend, revise or rescind the Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Generating Units."[6] As part of its comments on EPA's proposed performance standards and its petition for reconsideration of the final standards, UARG engaged experts to prepare numerous technical reports explaining to EPA why the performance standards EPA proposed (and later finalized) were neither based on adequately demonstrated systems of emission reduction nor achievable; these technical reports are available in the rulemaking docket.[7]

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[5] 82 Fed. Reg. 16,329 (Apr. 4, 2017).

[6] 82 Fed. Reg. 16,330 (Apr. 4, 2017).

[7] *See* UARG Comments on Proposed GHG NSPS for New Electric Generating Units ("EGUs") at Attachments 1-3, 5, 9, 11 (May 9, 2014), EPA-HQ-OAR-2013-0495-9666; UARG Comments on Proposed GHG NSPS for Modified and Reconstructed EGUs at Attachments B, C, G, K (Oct. 16, 2014), EPA-HQ-OAR-2013-0603-0215; UARG Petition for Reconsideration of Final GHG NSPS at Exhibit J (Dec. 22, 2015), EPA-HQ-OAR-2013-0495-11894.

Any replacement or revision to the greenhouse gas ("GHG") standards of performance for new, modified, and reconstructed electric generating units must adhere to the statutory confines of section 111 of the CAA, must be based on a "best system of emission reduction" that has been adequately demonstrated, and must be achievable by the individual electric generating units subject to the rule.

Of particular note, any replacement or revision to these standards of performance cannot, for the purposes of determining the "best system of emission reduction," take into account technology that received funding or tax subsidies under the Energy Policy Act of 2005, as consideration of those technologies for that purpose is prohibited by that Act.

C. Greenhouse Gas Mandatory Reporting Rule ("GHG MRR"), codified at 40 C.F.R. Part 98

Under the fiscal year 2008 Consolidated Appropriations Act, Congress authorized funding for EPA to develop and publish a rule "to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States."[8] The joint explanatory statement accompanying the legislation directed EPA to use its existing authority under the CAA (e.g., authority under CAA § 114) to develop a mandatory GHG reporting rule covering those upstream production and downstream sources the Administrator deems "appropriate," and to determine "appropriate thresholds" and frequency for reporting.[9] Congress also authorized EPA to rely on the "existing reporting requirements for electric generating units under section 821 of the 1990 CAA Amendments."[10]

The reporting program has resulted in facilities expending enormous resources tracking, quality assuring, and reporting vast amounts of information. EPA also continues to spend significant resources for both its own staff and Agency contractors to implement the GHG MRR and its electronic reporting requirements. Since its initial promulgation in October 2009, EPA has revised the regulation dozens of times. Although UARG understands that many of these rule revisions have been directed at correcting errors or simplifying data collection and reporting, the need for so many revisions underscores the complicated nature of the program.

In the past, UARG has questioned the "practical utility"[11] of much of the collected information and offered suggestions for simplification of the program. For example, under

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[8] Pub. L. No. 110–161, 121 Stat. 1844, 2128 (2007).

[9] 74 Fed. Reg. 16,448, 16,454 (Apr. 10, 2009).

[10] *Id.* (internal quotation marks omitted).

[11] EPA's authority to collect information under CAA § 114 is limited by the Paperwork Reduction Act and its implementing regulations. To require a data collection, EPA must

Subpart C, which covers general "stationary fuel combustion sources," the term is defined simply as a device that combusts fuel and does not require that the device be used for any particular purpose.[12] As a result, facilities with total emissions above the rule's applicability threshold must include in their facility-wide calculation miscellaneous combustion devices, like small gas-fired heaters, stoves, lawn mowers, or even hot water heaters. Reporting GHG emissions from such miscellaneous devices is time consuming and the information is of little value. UARG previously asked EPA either to define more narrowly what type of device triggers reporting or to adopt a *de minimis* threshold for reporting emissions from such devices at a stationary fuel combustion source.[13]

Now that the program has been in place for more than seven years, and EPA has provided Congress the information it sought, EPA should review how all of the information being collected has been used and whether the Agency's assumptions about the information's "practical utility" are correct. EPA should use this information to tailor the program so that it provides a significant "net benefit" consistent with the objectives of Executive Order 13777. At a minimum, UARG encourages EPA to establish a *de minimis* cut-off for reporting emissions from miscellaneous activities and streamline by "auto-populating" any emissions already being reported under another federal regulatory program, such as CO_2 emissions data collected under 40 C.F.R. Part 75.

In addition, as part of the rulemakings discussed in Sections I.A and I.B above, EPA amended Part 98 to impose additional reporting requirements on owners of electric generating units that transfer captured carbon dioxide to sites reporting under Subpart RR, while also requiring units to transfer their captured carbon dioxide to Subpart RR reporting sites if they wish to rely on carbon capture to meet an applicable emission limit or earn emission reduction credits. EPA should reconsider this requirement, which is unduly burdensome, costly, and does not have any environmental benefit.

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demonstrate the "practical utility" of the covered information. 5 C.F.R. § 1320.5(d)(1)(iii). Under 5 C.F.R. § 1320.3(l),

> *Practical utility* means the actual, *not merely the theoretical or potential,* usefulness of information…. In determining whether information will have 'practical utility,' OMB will take into account whether the agency demonstrates *actual timely use* for the information….

(emphases added).

[12] 40 C.F.R § 98.30(a).

[13] *See, e.g.*, UARG Comments on Proposed GHG MRR (June 9, 2009), EPA-HQ-OAR-2008-0508-0493.

II. Cross-State Air Pollution Rule ("CSAPR") Update Rule

EPA should reconsider and modify certain aspects of the Cross-State Air Pollution Rule Update for the 2008 Ozone National Ambient Air Quality Standards ("NAAQS") (known as the "CSAPR Update Rule").[14] The CSAPR Update Rule establishes stringent "ozone-season" (May-through-September) budgets for additional limits on emissions of nitrogen oxides ("NOx") from fossil fuel-fired electric generating units, beginning this month, in each of 22 states: Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas. Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. The rule is a new regulatory program that imposes costs exceeding any reasonable measure of projected benefits. Indeed, EPA's own modeling showed that the emission reductions required of upwind states under the CSAPR Update Rule are disproportionate to the relatively limited projected reductions in downwind ozone concentrations that the rule's emission limits are estimated to produce.[15] Furthermore, if left unmodified, the CSAPR Update Rule threatens jobs in the energy sector because its stringent emission caps can be expected to have the effect of restricting fuel choice.

UARG filed its petition for reconsideration of the CSAPR Update Rule with EPA on December 23, 2016. At least eight other petitions for reconsideration of the rule are pending before EPA.[16] The CSAPR Update Petition describes several aspects of the rule that EPA should reconsider, including: (i) EPA's reliance on modeling projections to identify downwind areas to be addressed by the rule, in disregard of real-world air quality conditions;[17] (ii) EPA's use of an unjustifiably low one-percent-of-NAAQS "contribution threshold" to "link" upwind states to downwind receptors and thereby to subject those states to additional regulation under the rule;[18] and (iii) EPA's failure, in conducting its air quality modeling, to properly account for effects of emissions from non-U.S. sources, which no state has the authority or ability to regulate.[19] Additional background regarding concerns with EPA's CSAPR Update Rule methodology is provided in the CSAPR Update Petition and in UARG's rulemaking comments submitted to

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[14] 81 Fed. Reg. 74,504 (Oct. 26, 2016).

[15] *See* UARG's Petition for Partial Reconsideration of the CSAPR Update Rule at Section X (Dec. 23, 2016) ("CSAPR Update Petition"), https://www.epa.gov/sites/production/files/2017-01/documents/the_utility_air_regulatory_group_0.pdf.

[16] *See* https://www.epa.gov/airmarkets/petitions-reconsideration-received-csapr-update.

[17] CSAPR Update Petition at Sections I & II.

[18] *Id.* at Section III.

[19] *Id.* at Section IV.

EPA on the December 2015 proposed version of the CSAPR Update Rule.[20] In addition, several petitions for judicial review of the CSAPR Update Rule have been filed and are pending in the U.S. Court of Appeals for the D.C. Circuit, including petitions for review filed by UARG, Murray Energy Corporation, many other industry parties, and several states (Alabama, Arkansas, Ohio, Texas, Wisconsin, and Wyoming) (*Wisconsin v. EPA*, No. 16-1406 & consolidated cases).

EPA should promptly reconsider and modify key elements of the CSAPR Update Rule, as identified in UARG's CSAPR Update Petition, to alleviate unnecessary, costly, and counterproductive regulatory burdens.[21] In doing so, EPA should, for example, consider, propose, and promulgate changes that would increase the levels of states' emission budgets based on corrections to and further review of the existing rule, as well as changes that would appropriately reform EPA's methodology for addressing interstate transport, as described in the attached CSAPR Update Petition and UARG's rulemaking comments.[22] In addition, based on its review and reconsideration of the CSAPR Update Rule and its methodology, EPA should, to the extent supported by appropriate analysis, issue a determination identifying states that currently are subject to that Rule but that do not contribute significantly to nonattainment of the 2008

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[20] *See* UARG Comments on Proposed CSAPR Update Rule (Feb. 1, 2016), EPA-HQ-OAR-2015-0500-0253. UARG also submitted supplemental comments on June 1, June 9, and August 16, 2016, addressing information that became available after the deadline for submitting comments on the proposed rule. UARG's supplemental comments are attached to the CSAPR Update Petition as Appendix A to that document.

[21] UARG emphasizes that it will be important for EPA, as it reconsiders the CSAPR Update Rule, to ensure that states may continue to rely on compliance with the NOx and sulfur dioxide ("SO_2") emission limits in CSAPR itself to satisfy "best available retrofit technology" ("BART") requirements for EGUs under the CAA's visibility protection program, as provided in 40 C.F.R. § 51.308(e)(4) (as promulgated at 77 Fed. Reg. 33,642, 33,656 (June 7, 2012)). *See also* 81 Fed. Reg. 78,954, 78,961-64 (Nov. 10, 2016) (describing EPA's sensitivity analysis reaffirming the validity of the Agency's determination that participation in CSAPR is a valid BART alternative).

[22] As noted in the CSAPR Update Petition, EPA in reviewing and reconsidering the CSAPR Update Rule should not make any change that would result in imposition of an ozone-season NOx emission budget for any state that is more stringent than the budget for that state under the existing rule. EPA also should not make any change that would affect the continuing validity and effectiveness of the parts of the CSAPR Update Rule in which EPA determined that: (i) Florida, North Carolina, and South Carolina are excluded from the ozone-season NOx program under both the original CSAPR and the CSAPR Update Rule; and (ii) Georgia is not subject to any obligations with respect to interstate transport for ozone NAAQS beyond those established for that state in CSAPR itself.

ozone NAAQS in (and do not interfere with maintenance of that NAAQS by) any other state and, consequently, remove those states from coverage under the CSAPR Update Rule.

III. Regional Haze and Other Visibility Regulations

EPA should reconsider and modify certain aspects (described below) of its January 10, 2017 visibility rule revisions that, if left unmodified, will impose unnecessary and counterproductive regulatory costs and other burdens.

Sections 169A and 169B of the Act and EPA regulations at 40 C.F.R. §§ 51.300-51.309 require states to adopt and submit state implementation plans ("SIPs") to achieve "reasonable progress" toward a national goal of preventing and remedying impairment of visibility in certain national parks and wilderness areas, to the extent visibility impairment in those areas results from manmade air pollution. The CAA's visibility program generally requires states to evaluate emission sources or source categories for potential emission controls to help achieve reasonable progress. Although Congress intended that states be the principal decisionmakers in this area, in many instances over the past eight years, EPA improperly assumed the states' role.

During the first "planning period" under the visibility program's "regional haze" provisions—a period that began in 2008 and will end in 2018—the primary regulatory driver was the CAA's BART requirement applicable to many EGUs and industrial sources. Now that decisionmaking on BART is complete for most states, the main focus of the upcoming second planning period, which will run from 2018 to 2028, will be implementation of the CAA's reasonable progress requirement.

EPA substantially amended many elements of its visibility protection regulations in its January 10, 2017 rule.[23] Contrary to the version of that final rule as signed on December 14, 2016 (which would have taken effect 30 days after publication in the *Federal Register*), the final rule as published on January 10 was made effective immediately in order to evade the incoming Administration's normal regulatory review and its "regulatory freeze" pending that review. The January 10 rule is the subject of three petitions for administrative reconsideration filed with EPA and eleven petitions for review in the U.S. Court of Appeals for the D.C. Circuit (*Texas v. EPA*, No. 17-1021 and consolidated cases). UARG filed a petition for administrative reconsideration[24] and a petition for judicial review of the rule. EPA has not yet responded to UARG's petition for reconsideration. As described below and in the Visibility Rule Petition, the rule has several provisions that EPA should now reconsider and repeal or modify.

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[23] 82 Fed. Reg. 3078 (Jan. 10, 2017).

[24] *See* UARG Petition for Partial Administrative Reconsideration of Amended Visibility Requirements (Mar. 13, 2017) ("Visibility Rule Petition") (attached as Exhibit 1).

When Congress enacted the CAA's visibility provisions, it made clear the states have broad discretion in implementing the program. The D.C. Circuit recognized that principle in the leading case in this area, *American Corn Growers Ass'n v. EPA*, 291 F.3d 1 (D.C. Cir. 2002). As the program was implemented during the previous administration, however, EPA frequently failed to give the deference that it owed to state decisions and often supplanted reasonable state regulatory plans with more stringent and costly federal control requirements in many states, including Arizona, Arkansas, Nebraska, New Mexico, North Dakota, Oklahoma, Texas, Utah, and Wyoming.

To address these problems, EPA should modify its January 10, 2017 regional haze rules to emphasize the breadth of state authority and to make clear EPA will not second-guess state determinations. EPA should do this by, for instance, making clear that states are free to decide how to consider and assess each of the statutory "reasonable progress" factors, including the costs associated with additional emission controls, and whether visibility improvements resulting from further controls will be substantial enough to warrant imposing those controls.

Although some parts of the January 10, 2017 rule make common-sense revisions that should be preserved—such as a three-year extension, from July 2018 to July 2021, of states' deadline to develop and submit SIPs for the second planning period—other parts of that rule create problems that require additional regulatory action to make necessary modifications. For example, the rule purports to impose on states an improper interpretation—adopted in the last Administration, over many stakeholders' objections—of the relationship between two key elements of the regional haze program: the requirement that states determine and adopt "reasonable progress goals" and the requirement that states identify specific emission control measures to include in "long-term strategies" to achieve reasonable progress. The January 10, 2017 rule requires states to first identify all measures to be included in the state's long-term strategy and then to calculate reasonable progress goals based on the degree of visibility improvement that computer modeling projects those measures will achieve. This aspect of the rule subverts the normal regulatory process by making states' determinations of reasonable progress goals an afterthought and compelling states to consider regulation even where it is unnecessary to stay on track toward reasonable visibility objectives. States should instead be free to develop reasonable progress goals they deem appropriate for a given area and then to determine which specific measures should be included in long-term strategies to achieve those goals.

The January 10, 2017 rule also has several other provisions that EPA should reconsider and modify—including (among others) provisions concerning the "uniform rate of progress" and provisions addressing states' consultation processes with other states and with federal land

management agencies. A detailed description of how EPA should address and reform these and other aspects of the rule is in UARG's Visibility Rule Petition.[25]

Consistent with Executive Order 13777, revising EPA's visibility rules as recommended in this comment letter and in UARG's Visibility Rule Petition would alleviate unnecessary regulatory burdens and would be consistent with applicable law. Such revisions would advance the Executive Order's objective of avoiding regulation that unnecessarily imposes costs that outweigh benefits and that inhibit job creation and economic growth.

IV. Regulation of Hazardous Air Pollutants

A. Compliance Provisions of the Mercury and Air Toxics Standards ("MATS") Rule, codified at 40 C.F.R. Part 63, Subpart UUUUU

The MATS Rule, regulating hazardous air pollutants from coal and oil-fired electric generating units, is among the most expensive and burdensome rules EPA has ever promulgated. Although the most significant costs associated with the rule derive from purchase, installation, and use of emission control technologies, the task of demonstrating compliance under the rule through periodic performance testing, continuous emissions monitoring, recordkeeping, and reporting also is costly. Some of those compliance demonstration costs are unavoidable, but other costs and burdens are avoidable. Rules that are written clearly and that offer flexibility—where that can be achieved without sacrificing environmental protections—provide the greatest "net benefit." Unfortunately, the MATS Rule has many provisions that are internally inconsistent, ambiguous, or inflexible, each of which adds significantly to the cost and burden of complying with the rule.

Although the current rule is the product of multiple rulemakings over a period of more than 5 years, those successive rulemakings have not fully addressed the rule's overall compliance burdens. The 2012 rule contained numerous errors and problems, many of which are described in detail in UARG's first petition for administrative reconsideration.[26] When EPA conducted a reconsideration rulemaking on a few of the issues in the rule pertaining to periods of startup and

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[25] As noted above and in the Visibility Rule Petition, one provision of the January 10, 2017 rule is an adjustment, from July 2018 to July 2021, of the deadline by which states must submit SIPs for the second planning period. UARG joins numerous states and other stakeholders in supporting that deadline adjustment and urges EPA *not* to reconsider that element of the rule.

[26] *See* UARG Petition for Reconsideration of MATS Rule at Section VI (Apr. 16, 2012), EPA-HQ-OAR-2009-0234-20180.

shutdown, the Agency's 2014 reconsideration rule created more problems than it resolved.[27] UARG raised those problems and other longstanding issues in comments on the Agency's 2015 proposed "Technical Corrections" to the MATS Rule.[28] Although EPA resolved some of the issues from the prior two rulemakings in its 2016 Technical Corrections rule, a lot of work remains to be done to make the rule clear, consistent, and appropriately flexible. Even after improvements to the rule in the Technical Corrections, facilities are struggling to interpret and reconcile ambiguous and inconsistent provisions. They also remain subject to overly restrictive requirements for the conduct of performance tests that could result in operation of units that otherwise would not operate, simply to conduct tests to measure emissions. This is unnecessary, costly, and grossly inefficient.

EPA currently is in the middle of another MATS-related rulemaking, this one focused on improving the electronic reporting requirements of the MATS Rule by allowing all reports to be submitted using the Emissions Collection and Monitoring Plan System ("ECMPS") software system already used by utilities under the Acid Rain Program and CSAPR. Although UARG supports that change, UARG members are concerned that the burdens associated with some of the very detailed electronic reporting EPA has proposed will outweigh the cost savings associated with the move to ECMPS. EPA and utilities also cannot successfully implement the electronic reporting requirements without a common understanding of what other substantive compliance provisions in the rule require. As a result, in comments on that proposal, UARG again asked EPA to resolve some of the issues UARG has identified in the existing rule, in addition to requesting changes in the volume of new information EPA has proposed be submitted electronically.[29]

The MATS Rule has the potential to be less costly. EPA should use the opportunity of the ongoing rulemaking to work with UARG to achieve that end by resolving the issues that remain in the existing rule's compliance procedures, and addressing UARG's concerns about the proposed revisions.

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[27] EPA ultimately denied reconsideration on the remainder of UARG's 2012 petition without addressing the merits of UARG's concerns regarding the compliance provisions, concluding only that it had met its procedural obligations under CAA § 307(d)(7) to solicit comment on the rule. EPA, Denial of Petitions for Reconsideration of Certain Issues: MATS and Utility NSPS (Mar. 2015), EPA-HQ-OAR-2009-0234-20493.

[28] *See* UARG Comments on Proposed Technical Corrections (Apr. 3, 2015), EPA-HQ-OAR-2009-0234-20483.

[29] *See* UARG Comments on Proposed MATS Electronic Reporting Rule (Nov. 15, 2016), EPA-HQ-OAR-2009-0234-20609.

B. Renewed Analysis of Potentially Delisting Natural Gas-Fired Stationary Combustion Turbines from Regulation Under CAA Section 112

Gas-fired combustion turbines make up a large and growing portion of the nation's electric generating fleet, and they are an essential part of maintaining electric reliability in the United States. But for over a decade these sources have been in legal limbo with respect to their regulatory status under the CAA's regulatory provisions governing hazardous air pollutants ("HAPs"). The resulting uncertainty presents risks to combustion turbine owners that should be addressed by EPA.

EPA listed stationary combustion turbines as a source category for regulation under section 112 of the Act in 1992 and promulgated emission standards limiting HAP emissions from new and reconstructed turbines in 2004.[30] However, almost immediately, EPA proposed to remove natural gas-fired combustion turbines from the list of sources subject to regulation under section 112.[31] Based on EPA's own analysis and on a petition for delisting submitted by the Gas Turbine Association, the Agency made a preliminary finding that gas-fired turbines meet the CAA's health-protective criteria for delisting.[32]

EPA's 2004 analysis found that even using conservative assumptions about exposure and risk, emissions from gas-fired combustion turbines would meet these health-protective statutory criteria. Accordingly, EPA proposed to delist gas-fired turbines from section 112 regulation. Recognizing that it would be irrational to require compliance with a rule it intended to revoke, EPA also issued a stay of the emission standards for gas-fired turbines until the Agency could take final action on its delisting proposal.[33]

However, EPA never took final action on its delisting proposal. According to the terms of the stay, if EPA ultimately decides not to delist gas-fired turbines, then the standards will spring into effect for any turbine built after January 2003. This twelve-year waiting period has generated significant regulatory uncertainty for owners of gas-fired combustion turbines, who cannot say for certain whether or not their turbines built in the interim must comply with the emission standards. That uncertainty is compounded by EPA's upcoming Risk and Technology

[30] 69 Fed. Reg. 10,512 (Mar. 5, 2004).
[31] 69 Fed. Reg. 18,327 (Apr. 7, 2004).
[32] *Id.*; *see* CAA § 112(c)(9)(B) (describing criteria).
[33] 69 Fed. Reg. 51,184 (Aug. 18, 2004).

Review ("RTR") for stationary combustion turbines: turbine owners cannot be sure whether EPA will further tighten the standards that might ultimately apply if the stay is lifted.[34]

EPA should revisit its delisting proposal for gas-fired combustion turbines and assess whether those sources still meet the statutory criteria for delisting. The Agency's previous review showed that gas-fired turbines' HAP emissions posed minuscule risks to health and the environment. If the delisting criteria are still satisfied, EPA should promptly delist gas-fired turbines from regulation under section 112.[35] If gas-fired turbines are not delisted, the Agency should, as appropriate, provide for a transition mechanism for gas-fired turbines constructed since 2003, and EPA should be careful in the RTR proceeding not to impose revised standards that would be unduly burdensome and costly.

C. National Emissions Standards for Hazardous Air Pollutants and New Source Performance Standards for Stationary Reciprocating Internal Combustion Engines ("RICE"), codified at 40 C.F.R. Part 60 Subparts IIII and JJJJ and 40 C.F.R. Part 63 Subpart ZZZZ

EPA has promulgated a set of interrelated regulations for emissions from RICE units pursuant to both CAA § 111 (new source performance standards) and § 112 (national emissions standards for HAPs). Each set of rules identifies numerous subcategories of internal combustion engines and applies varying requirements to each subcategory based on age, size, fuel type, engine design, use, and other factors. The overlapping regulatory programs and range of subcategories have resulted in a complex set of requirements that can be difficult for source owners to navigate.

The RICE regulations generally require manufacturers to install cost-effective state-of-the-art technology to minimize emissions. UARG agrees that requiring manufacturers (rather than source owners or operators) to install these controls is a reasonable approach to regulation for these sources. But EPA has also promulgated extensive and burdensome testing, maintenance, and record-keeping requirements for owners and operators. These requirements

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[34] A federal court recently set a March 2020 deadline for EPA to complete its RTR for stationary combustion turbines (along with 19 other source categories). *Cal. Cmtys. Against Toxics v. Pruitt*, No. 15-cv-512 (TSC), 2017 WL 978974 (D.D.C. Mar. 13, 2017).

[35] Although the D.C. Circuit has ruled that CAA § 112(c)(9)(B)(i) only allows EPA to delist entire source categories (rather than subcategories), *see NRDC v. EPA*, 489 F.3d 1364 (D.C. Cir. 2007), nothing in the Act prohibits EPA from reclassifying gas-fired combustion turbines as a separate source category and delisting them. *See* CAA § 112(c)(1).

impose substantial costs with little to no benefit. Emissions from RICE sources are already small and do not warrant these onerous and needless regulations.

For example, EPA has placed unnecessary restrictions on the operation of emergency engines. These engines are limited to just 50 hours of non-emergency operation, which count toward the 100 hour annual limit for testing and maintenance. Tracking these independent uses of RICE sources is burdensome and achieves no benefit. In addition, the work practice standards for most RICE sources require servicing the unit more often than manufacturer specifications, which is inefficient and does not provide environmental benefits. Finally, for new Tier 4 engines, EPA adopted redundant requirements for both manufacturers and operators restricting operation when certain emission controls are not working properly, which serve only to hinder operators' ability to address emergency situations. These provisions are burdensome, threaten reliability, and inappropriately place manufacturers in the role of policing emergency situations.

EPA should eliminate the unnecessary requirements applicable to RICE sources and adopt clear, streamlined replacements.

V. Preconstruction Permitting Issues

A. New Source Review ("NSR") Reform

The Act's NSR program requires major stationary sources to go through an extensive, time-consuming, and costly review and permitting process prior to construction. The NSR program also applies to existing facilities if they are modified in substantial ways and if, as a result, emissions increase by significant amounts (these are known as "major modifications"). The NSR program requires, among other things, that the owner or operator of a proposed new major source or a proposed major modification obtain a pre-construction permit, which will be issued only if the owner/operator (i) demonstrates—normally through air quality modeling—that the proposed major new source or modification will not cause or contribute to a violation of air quality standards; (ii) installs the best available control technologies ("BACT") to reduce levels of specific regulated pollutants, and (iii) demonstrates that the proposed new source or modification will not cause an adverse impact on air quality-related values in federally protected lands (*e.g.*, national parks or wilderness areas).

For the first two decades of the NSR program, existing sources rarely triggered it. That is because EPA applied it in a way to be triggered only by unusual projects that would expand the capacity of the source—i.e., projects that create *new* sources of emissions. It is also because NSR is so time-consuming and expensive that sources generally avoided activities that would expand their capacities *because* they could trigger NSR.

Starting in the late 1990s, however, EPA's enforcement arm, in an effort to drive policy, filed and/or threatened a large number of lawsuits to force the installation of controls not otherwise required by the Act. To achieve this goal, EPA asserted in the lawsuits a theory of universal liability: any maintenance project—anything larger than day-to-day activity akin to changing a car's oil—is a "change" that could trigger NSR; and any such "change," if it addresses reliability, availability, or efficiency issues that the plant might have experienced in the recent past, according to the lawsuits, will "increase" total emissions as compared to the recent past and therefore will trigger NSR. More than a decade and half later, these types of lawsuits continue, with no certainty as to how the NSR program will apply to existing plants. For example, courts have reached diametrically opposite conclusions with respect to whether similar projects are considered routine maintenance, repair, and replacement ("RMRR") and thus excluded from NSR.[36] EPA's latest revision of the emissions increase provisions has, in a single case, generated five different opinions as to how these provisions should apply.[37] At a minimum, the fact that courts—and even judges within the same court—cannot agree on what these regulations mean and how they should apply in particular circumstances highlights the uncertainty these regulations have created and how inefficient their application has been in the recent past.

The NSR rules, as EPA's enforcement arm has sought to apply them to existing facilities for the last decade and a half, discourage—and potentially impose very large costs on—needed projects to maintain and improve existing plants' availability, reliability, safety, and efficiency. Those are precisely the types of projects that maintain American industry's competitiveness and are needed to cost-effectively maintain the reliability of the nation's energy systems. For these reasons, the NSR rules should be revised to remove the uncertainty surrounding their applicability and the perverse incentives they create.

B. Synthetic Minor Sources

Current NSR regulations contain a provision (40 C.F.R. § 52.21(r)(4)) stating that a synthetic minor source—i.e., a source or modification that took operational or other limitations

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[36] *Compare, e.g.*, *Nat'l Parks Conservation Ass'n v. TVA*, No. 3:01-CV-71, 2010 WL 1291335 (E.D. Tenn. Mar. 31, 2010) (finding economizer and superheater replacements RMRR); *with United States v. La. Generating LLC*, No. 09-100-JJB-CN, 2012 WL 4107129, at *4 (M.D. La. Sept. 19, 2012) (finding reheater replacements not RMRR).

[37] *See United States v. DTE Energy Co.*, 845 F.3d 735 (6th Cir. 2017) (three different opinions), 711 F.3d 643 (6th Cir. 2013) (two different opinions). The Sixth Circuit recently denied DTE Energy's petition for rehearing en banc, and currently has pending before it DTE Energy's motion to stay the mandate pending the filing of a petition for certiorari.

to remain minor—becomes subject to NSR when it "becomes a major source or major modification solely by virtue of relaxation in any enforceable limitation" established in a federally enforceable air permit. This provision was placed in the NSR regulations to prevent circumvention of those regulations—that is, sources taking limitations to avoid NSR review when they are constructed, only to seek to relax these limitations a short period thereafter.

That provision is too broad, however, in that it sweeps into its scope circumstances in which EPA's concerns about circumvention are clearly not implicated: for example, a situation in which a relaxation of the permit limits may be sought years after the initial construction. As a result, this rule unnecessarily limits production and hinders economic growth, even though the increase in emissions from the later construction is very small and would have a *de minimis* impact (i.e., even though the proposed change itself is not major). In the utility industry, the result is that generation is shifted to higher cost units, unnecessarily increasing costs for ratepayers and, in all likelihood, resulting in more (not less) emissions.

This "relaxation" provision should be revised such that it does not apply in situations in which the risk of circumvention is very unlikely or nonexistent. For example, EPA should consider whether, after a certain amount of time has passed (such as five or more years after a permit containing the operational limitation was issued), the relaxation provision should no longer apply. In these circumstances, a proposed physical or operational change should be analyzed under the base NSR rules, as it would be for any other "true" minor source or modification. Such a change to the regulations would sensibly encourage economic growth while simultaneously ensuring that any physical or operational change that is a major source or modification in its own right would be subject to preconstruction review.

C. Prevention of Significant Deterioration ("PSD") Significant Emissions Rate for Greenhouse Gases

In *UARG v. EPA*,[38] the Supreme Court held that EPA's so-called "Tailoring Rule" was unlawful in as much as it would apply the PSD and Title V permitting programs to sources based solely on their GHG emissions. Instead, the Court held, EPA's authority to regulate GHGs under PSD and Title V extends only to "anyway" sources, that is, sources that otherwise would trigger these permitting requirements for non-GHG pollutants. For these "anyway" sources, EPA could require BACT for GHGs "only if the source emits more than a *de minimis* amount of greenhouse gases."[39] On remand, EPA proposed to establish its previous Tailoring Rule threshold, 75,000 tons per year, as that *de minimis* level or "Significant Emissions Rate" (also known as a

[38] 134 S. Ct. 2427 (2014).
[39] *Id.* at 2449.

significance threshold).[40] UARG and its members filed comments supporting EPA's authority to establish a significance threshold on *de minimis* grounds, but objecting to the proposed rule's approach of merely reverse-engineering a pre-determined result—namely, the Tailoring Rule's 75,000 tons per year level—instead of applying the correct legal standard for *de minimis* authority and properly evaluating the facts and data in the record under that standard.[41] Indeed, as UARG's comments explained, applying EPA's historic and well-established approach would have yielded a significance threshold of 320,000 tons per year, four times higher than EPA's predetermined, "preferred" result. Yet, not only did the proposed rule reject any significance threshold higher than 75,000 tons per year, it arbitrarily declared that EPA would not even accept comments on such higher thresholds.

Establishing an appropriate PSD *de minimis* level for GHGs falls squarely in the category of action that would alleviate unnecessary, costly, and counterproductive regulatory burdens. EPA should withdraw the current proposal, and propose a new, higher significance threshold for GHGs.

VI. New Source Performance Standards ("NSPS") Issues

A. Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,276 (Aug. 29, 2016), codified at 40 C.F.R. Part 60, Subpart Cf

UARG urges EPA to grant petitions for reconsideration that are pending before the Agency regarding this rule, which revised the existing emissions guidelines for municipal solid waste landfills to make them more stringent. Although EPA possesses authority to amend regulations to correct mistakes or to streamline processes as part of its authority under section 111(d), the Agency lacks authority under that provision to revise its emission guidelines to direct states to make previously promulgated standards of performance for existing sources more stringent. UARG filed comments on EPA's proposed revision to the emission guidelines that are available in the rulemaking docket.[42] UARG is also challenging this rule (along with other Petitioners) in the U.S. Court of Appeals for the District of Columbia Circuit (*Nat'l Waste & Recycling Ass'n v. EPA,* No. 16-1371 and consolidated cases).

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[40] 81 Fed. Reg. 68,110 (Oct. 3, 2016).

[41] UARG Comments on Proposed Significance Threshold (Dec. 16, 2016), EPA-HQ-OAR-2015-0355-0089.

[42] *See* UARG Comments on Proposed Emission Guideline Revisions for Municipal Solid Waste Landfills (Oct. 26, 2015), EPA-HQ-OAR-2014-0451-0198.

B. Electronic Reporting Under the NSPS, codified at 40 C.F.R. Part 60

New source performance standards establish federally enforceable emission standards and related compliance requirements for new, modified, and reconstructed facilities in specific source categories.[43] NSPS are established by EPA, but their implementation and enforcement usually are delegated to state agencies. Reporting requirements for the NSPS are established in the general provisions in Subpart A and in individual subparts. The general provisions currently require duplicate reporting to EPA Regional Offices and delegated state agencies, generally in hard copy (although use of electronic media also is permitted for submissions to state agencies with their consent).

Electronic reporting of information to a centralized data system has the potential to reduce costs and burdens and improve accessibility of information to regulators, the regulated entities, and the public. Unfortunately, EPA's implementation of such reporting under the NSPS has done the opposite.

Beginning in 2009, EPA started inserting into individual subparts of the NSPS a requirement that facilities electronically submit certain reports to EPA using an EPA-designed software system and website that the Agency was in the process of developing. The first of those requirements took effect July 1, 2011.[44] The requirement to submit existing reports electronically to a central location has not been controversial. However, the software system EPA has specified (called the "Electronic Reporting Tool" or "ERT") is controversial because the program is outdated and difficult to use, and because it requires submission of significant volumes of information that are not necessary to demonstrate compliance with any applicable NSPS.[45] EPA's failure to relieve sources from existing duplicate paper reporting requirements also generated objections.

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[43] UARG members own and operate facilities subject to many NSPS subparts, including those applicable to steam generating units (Subparts D, Da, Db, and Dc), combustion turbines (Subparts GG and KKKK), coal preparation plants (Subpart Y), and nonmetallic mineral processing plants (Subpart OOO).

[44] *See, e.g.*, 40 C.F.R. § 60.49a(v)(4) (Subpart Da), § 60.46b(j)(14) (Subpart Db), § 60.45c(c)(14) (Subpart Dc), § 60.258(d) (Subpart Y).

[45] EPA has said it is collecting the additional information to assist in development of emission factors. Initially, EPA collected the information simply by mandating use of the ERT software. However, in 2016, EPA revised the general provisions to codify some of those reporting requirements. 81 Fed. Reg. 59,800 (Aug. 30, 2016) (revising 40 C.F.R. § 60.8(f)).

In 2015, EPA proposed to expand the electronic reporting requirement to all but a few NSPS subparts by revising the general provisions.[46] UARG's objections to the ERT and EPA's proposed expansion of the requirement are described in detail in UARG's comments on that proposal.[47]

On December 21, 2016, EPA Administrator Gina McCarthy signed a final rule that would impose many of the burdens to which UARG and others objected. The rule has not yet been published. Although that rule includes some extended deadlines, multiple promises to develop alternatives to the use of the ERT, and other improvements as a result of comments, the basic mandate of the rule is the same. If the rule becomes effective, numerous facilities will be required (at least in the short term) to electronically report significant volumes of information to EPA using the ERT, in addition to providing the same information in hard copy to any delegated state that does not waive the duplicate reporting requirement. The final rule also includes drafting errors that would inadvertently impose the new requirements on facilities EPA said it planned to exclude from the rule. If the rule is published, UARG intends to petition for administrative reconsideration.

The current NSPS electronic reporting requirements, and the planned expansion of those requirements to include many additional subparts, do not provide a "net benefit." EPA should formally withdraw the signed final rule and issue a new proposal to replace existing requirements for reporting using the ERT with a more workable electronic reporting system and to reduce the volume of information that must be reported electronically. For electric utilities, EPA should consider adapting its existing ECMPS software, which already is used by utilities to report information under the Acid Rain Program and CSAPR, to collect any additional information needed for those sources to demonstrate compliance with an applicable NSPS. As discussed further in Section IV.A above, EPA already is doing that for the MATS Rule at 40 C.F.R. Part 63, Subpart UUUUU.

Finally, EPA should act expeditiously—perhaps by direct final rule—to authorize use of electronic reporting (including email submission of electronic media) to EPA Regional Offices and to remove requirements for duplicate reporting to EPA Regions of information already electronically reported to EPA (e.g., to ECMPS or EPA's Central Data Exchange),

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[46] 80 Fed. Reg. 15,100 (Mar. 20, 2015).

[47] *See* UARG Comments on Proposed NSPS Electronic Reporting Rule (June 18, 2015), EPA-HQ-OAR-2009-0174-0093.

C. Reconsideration of the NSPS for Stationary Combustion Turbines, codified at 40 C.F.R. Part 60, Subpart KKKK

EPA promulgated the NSPS for new, modified, and reconstructed stationary combustion turbines in July 2006 as Subpart KKKK.[48] UARG filed a petition for administrative reconsideration of that rule raising several objections, including that (i) the rule's NOx standards were unachievable for large gas-fired turbines operating in simple cycle mode, (ii) the rule failed to provide a methodology to calculate compliance for operating periods when several different standards apply, and (iii) several other issues related to emissions monitoring.[49]

EPA agreed to reconsider the Subpart KKKK rule and issued a proposed reconsideration rule in August 2012.[50] Instead of simply addressing UARG's reconsideration request, EPA proposed an almost complete rewrite of the rule, creating many new problems. At the same time, the proposal failed to actually address some of the specific issues UARG raised in its reconsideration petition. Further, EPA proposed to radically alter the analysis used to determine whether an existing combustion turbine had been "reconstructed," such that commonplace, insignificant work regularly performed at turbine facilities could subject those units to the stringent standards in Subpart KKKK. UARG submitted comments explaining its objections to the proposed changes to the reconstruction analysis and other problematic aspects of the proposal.[51] EPA never finalized its proposed reconsideration rule.

EPA's proposed reconsideration rule has subjected combustion turbine owners to considerable regulatory uncertainty, making it difficult for them to anticipate the legal consequences of necessary maintenance activities or to predict what standards their turbines will ultimately need to comply with. UARG urges the Agency to address this uncertainty by issuing a supplemental proposal on reconsideration of Subpart KKKK that withdraws the 2012 proposal's changes to the reconstruction analysis and that addresses in full the issues in UARG's petition for reconsideration and its comments on the 2012 proposed rule.

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[48] 71 Fed. Reg. 38,482 (July 6, 2006).

[49] *See* UARG Petition for Reconsideration of Subpart KKKK Rule (Sept. 7, 2006), EPA-HQ-OAR-2004-0490-0325.

[50] 77 Fed. Reg. 52,554 (Aug. 29, 2012).

[51] *See* UARG Comments on Subpart KKKK Reconsideration Proposal (Dec. 28, 2012), EPA-HQ-OAR-2004-0490-0418.

D. Reconsideration of the NSPS for Coal Preparation and Processing Plants, codified at 40 C.F.R. Part 60, Subpart Y

EPA promulgated revisions to the NSPS for coal preparation and processing plants in October 2009.[52] UARG filed a limited petition for reconsideration of these Subpart Y revisions, noting that the rule was vague as to how one could determine whether an existing coal pile had been "modified" or "reconstructed" and thus become subject to Subpart Y.[53] Because coal piles are always in flux and their emissions are difficult to measure, it is unclear how EPA would determine whether an emissions rate increase occurs for the purposes of modification, or what components would be included in a reconstruction analysis. UARG also asked EPA to reconsider its imposition of the burdensome electronic reporting requirements discussed above in Section VI.B. EPA agreed to reconsider those issues but has never issued a proposed reconsideration rule.

EPA's continued failure to address the treatment of existing coal piles under Subpart Y has created substantial regulatory uncertainty within the industry, making it difficult for them to predict how certain activities at their coal piles might trigger the requirements of Subpart Y. UARG urges the Agency to issue a proposed rule responding to UARG's reconsideration petition that clarifies how existing coal piles will be treated under Subpart Y and adopts a more reasonable mechanism for electronic reporting..

E. Revisions to Test Method for Determining Stack Test Gas Velocity Taking Into Account Velocity Decay Near the Stack Walls

In 2009, EPA proposed revisions to Test Method 2H in 40 C.F.R. Part 60, Appendix A, that would reduce regulatory burdens associated with emissions testing.[54] The proposal would incorporate into Method 2H a procedure in Conditional Test Method 041 the use of which EPA was already routinely approving through source-by-source petitions. The proposal, which would make the method more accurate and require less testing, was universally supported and technically sound.[55] UARG asked EPA to move expeditiously to finalize the revisions in order to eliminate the need for source-by-source petitions. More than seven years later, the proposal has yet to be finalized. UARG urges EPA not to delay any further and finalize the revisions as proposed.

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[52] 74 Fed. Reg. 51,950 (Oct. 8, 2009).

[53] *See* UARG Petition for Reconsideration of Subpart Y Rule (Dec. 7, 2009).

[54] 74 Fed. Reg. 42,819 (Aug. 25, 2009).

[55] *See, e.g.* UARG Comments on Test Method 2H Revisions (Oct. 26, 2009), EPA-HQ-OAR-2008-0697.

VII. National Ambient Air Quality Standards

A. "Findings of Substantial Inadequacy" of SIPs and "SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," published at 80 Fed. Reg. 33,840 (June 12, 2015)

In 2015, EPA Administrator Gina McCarthy in one action issued a group of "SIP Calls" mandating that 36 states revise their previously EPA-approved SIPs, because certain provisions of those SIPs addressing emissions from industrial sources during periods of startup, shutdown, or malfunction of applicable process or control equipment ("SSM") are inconsistent with EPA's most recent interpretations of certain CAA provisions. The SIP Calls are not based on any finding of air quality impacts or finding that removing the provisions is necessary to meet other CAA goals. Rather, they are based on the conclusion that there is a "facial inconsistency" of the called SIP provisions' language with EPA's recent interpretations of certain CAA provisions, and that inconsistency renders the previously EPA-approved SIPs "substantially inadequate."

Under the CAA, states have primary responsibility for attaining, maintaining, and enforcing the NAAQS through their SIPs and EPA has only a secondary role that provides no authority to force states to adopt specific control measures. The SIP Calls are inconsistent with that system of cooperative federalism. The SIP Calls also are inconsistent with agencies' inherent responsibility to consider costs and benefits when exercising discretionary authority. UARG is currently a petitioner challenging the SSM SIP Call in the U.S. Court of Appeals for the D.C. Circuit, and the opening briefs that Industry Petitioners (including UARG), State Petitioners, and Texas Petitioners filed are available in the docket for those consolidated cases.[56]

The called SIP provisions are all designed to address the inability of sources to meet otherwise applicable emission control requirements under certain operating conditions, like SSM periods. All of the states subject to the SIP Calls have submitted (or, for revised NAAQS, will submit) demonstrations establishing that their SIP will result in attainment of the NAAQS. Many of the subject states already are achieving some or all of the NAAQS through their existing SIPs. On the other hand, the SIP Calls have imposed on states, and on EPA, the obligation to embark on a years-long and costly process of review and approval/disapproval of revised state rules and potentially development of Federal Implementation Plans. Imposition of such costs, in the absence of quantifiable benefits, also is contrary to the goals of Executive Order 13777.

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[56] *See Walter Coke, Inc. v. EPA*, No. 15-1166 (D.C. Cir. Oct. 31, 2016), ECF Nos. 1643502, 1643571, 1643769.

In short, the SIP Calls interfere with state discretion and impose significant costs and burdens without any corresponding finding of air quality-related benefit. EPA should convene a proceeding to withdraw the SSM SIP calls by applying a SIP call standard that is consistent with its limited authority under the CAA and obligation to consider the impacts of its exercise of that authority.

B. NAAQS Promulgation and Implementation

NAAQS and their implementation are at the heart of the CAA. EPA sets the NAAQS and must review them at least every five years, revising them as appropriate. Unfortunately, when the NAAQS for a particular pollutant are revised, previous NAAQS for that pollutant seem to linger forever in scattered sections of the Code of Federal Regulations. For example, NAAQS for fine particulate matter ("$PM_{2.5}$") are found in sections 50.7, 50.13, and 50.18 of 40 C.F.R. Part 50. Such scattered codification of NAAQS is at best confusing and at worst misleading. UARG recommends revision of 40 C.F.R. Part 50 to remove NAAQS that have been replaced and to consolidate the current NAAQS for each regulated pollutant in a single section of the C.F.R.

UARG also urges the Agency to consider changes that would simplify the process that it uses to set and revise NAAQS. For example, the present process involves preparation by EPA's career staff of a Policy Assessment. This document is not required by the Act. It could be eliminated, modified to reflect senior management input, or replaced by an Advance Notice of Proposed Rulemaking as was planned in 2006.[57] In addition, to the extent that risk assessment remains a part of the process, UARG urges that the assessment fully capture uncertainty about the estimated number and quality of effects. Preparation of an Integrated Uncertainty Analysis, as the National Academy of Sciences has recommended, would advance this effort.

Once NAAQS have been promulgated, rules established by EPA play a vital role in their implementation. UARG recommends revision of certain aspects of recently-promulgated NAAQS implementation rules, including EPA's March 2015 rule establishing SIP requirements for the 2008 ozone NAAQS[58] and its August 2016 rule establishing SIP requirements for the 2012 $PM_{2.5}$ NAAQS,[59] to eliminate unnecessary and duplicative requirements. Specifically,

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[57] Memorandum from Marcus Peacock, Deputy Adm'r, EPA, to Dr. George Gray, Assistant Adm'r, Office of Research & Development, & William L. Wehrum, Acting Assistant Adm'r, Office of Air & Radiation (Apr. 17, 2007), https://www3.epa.gov/ttn/naaqs/pdfs/memo_process_for_reviewing_naaqs.pdf.

[58] 80 Fed. Reg. 12,264 (Mar. 6, 2015).

[59] 81 Fed. Reg. 58,010 (Aug. 24, 2016).

UARG urges EPA to revoke the requirement for "anti-backsliding" measures for the 1997 ozone NAAQS,[60] which was replaced in 2008 by a more stringent standard for ozone.[61] Section 172(e) of the CAA requires such measures only when a NAAQS is "relaxed." In addition, UARG recommends that EPA revise its implementation rule for the 2012 $PM_{2.5}$ NAAQS to revoke the less stringent 1997 standard throughout the nation, not just in areas designated attainment.[62] Although UARG recognizes the need for continuity in the NAAQS program and therefore is not recommending that a superseded NAAQS be rendered null immediately upon promulgation of a revised one, UARG recommends that EPA revoke any superseded NAAQS a year after the effective date of area designations for the new or revised NAAQS. The revocation should be effective nationwide. States should not be required to complete an attainment demonstration (or equivalent) for the superseded NAAQS.[63]

Finally, UARG urges EPA to return to its prior approach of relying on air quality monitoring to make initial designations for areas as attainment, nonattainment, or unclassifiable. The SO_2 NAAQS promulgated in 2010 was the first NAAQS for which the Agency chose to rely on modeling predictions—rather than monitoring data—for making initial designations. Modeling is not as accurate as monitoring. EPA's preferred air quality models and required approaches to modeling are conservative by design to ensure that pollutant concentrations in ambient air are not underestimated. EPA acknowledges that its preferred AERMOD model cannot predict pollutant concentrations accurately at a given time and place. Furthermore, EPA continues to revise its AERMOD modeling system, leading to questions concerning the modeling on which designations will be based.[64]

In addition to returning to its prior approach of relying on monitoring for initial designations in the future, EPA should revise nonattainment designations that have already been

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[60] 40 C.F.R. § 51.1105.

[61] *Compare* 40 C.F.R. § 50.10, *with id.* § 50.15.

[62] *See* 81 Fed. Reg. at 58,142.

[63] *See* Comments by UARG and the American Petroleum Institute on Proposed PM NAAQS Implementation Rule at 61-64 (May 29, 2015), EPA-HQ-OAR-2013-0691-0096; *see also* UARG Comments on Proposed Implementation Rule for the 2015 Ozone NAAQS at 5-8 (Feb. 13, 2017), EPA-HQ-OAR-2016-0202-0105.

[64] *See* Memorandum from Richard A. Wayland, Div. Dir., Air Quality Assessment Div., EPA Office of Air Quality Planning & Standards, to Regional Air Dirs., Regions 1-10 (Mar. 8, 2017) (clarification of the version of the AERMOD modeling system to be used for designations in light of recent revisions of the model), https://www3.epa.gov/ttn/scram/guidance/clarification/SO2_DRR_Designation_Modeling_Clarificaiton_Memo-03082017.pdf.

made based on modeling. Several areas were designated nonattainment based on modeling in 2016,[65] and states have submitted modeling for several other areas for which designations are required by the end of 2017.[66] EPA should use its correction authority under section 110(k)(6) of the Act to replace modeling-based nonattainment designations made in 2016 with unclassifiable designations. Because of the overestimates inherent in modeled air quality, however, attainment designations based on modeling remain valid and should be retained. Furthermore, areas for which designations must be made at the end of 2017 that have not demonstrated attainment through modeling and that do not have adequate monitoring data should be designated unclassifiable; those with adequate monitoring data should be designated according to those data. EPA should also repeal its 2015 Data Requirements Rule for SO_2.[67] That rule places additional burdens on states either to perform modeling or to conduct additional air quality monitoring of SO_2 sources for designations. Although this rule requires the use of either modeling or monitoring, even the monitoring requirement exceeds what is required of states for other criteria air pollutants.[68]

VIII. Air Quality Modeling Issues

On January 17, 2017, EPA promulgated revisions to its Guideline on Air Quality Models, codified at 40 C.F.R. Part 51, Appendix W ("Appendix W").[69] This rule, which specifies models, inputs, and techniques for use in preparing SIPs and PSD permit applications, is not yet effective. Although UARG supports some aspects of the rule revisions, others are expected to make SIP preparation and obtaining permits for new or modified sources more time-consuming and costly. Specifically, UARG is concerned about new modeling requirements for sources seeking permits that emit precursors to ozone or $PM_{2.5}$. Many electric generators fall in this category. The screening tools that EPA suggests—Significant Impact Levels and Modeled Emission Rates for Precursors—are not particularly helpful in their present form.[70] The photochemical grid modeling mandated for sources not helped by these tools is time-consuming

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[65] 81 Fed. Reg. 45,039 (July 12, 2016); 81 Fed. Reg. 89,870 (Dec. 13, 2016).

[66] *See* Fact Sheet: Final Data Requirements Rule for the 2010 1-Hour SO_2 Primary NAAQS (undated), https://www.epa.gov/sites/production/files/2017-02/documents/fact_sheet_-_final_data_requirements_rule.pdf.

[67] 80 Fed. Reg. 51,052 (Aug. 21, 2015).

[68] *See* UARG Comments on the Proposed Data Requirements Rule for the 1-Hour SO_2 NAAQS (July 14, 2014), EPA-HQ-OAR-2013-0711-0075.

[69] 82 Fed. Reg. 5182 (Jan. 17, 2017).

[70] UARG Comments on Draft Guidance on Development of MERPs (Mar. 31, 2017) (attached as Exhibit 2); UARG Comments on Draft Guidance on SILs for Ozone and Fine Particles (Sept. 30, 2016) (attached as Exhibit 3).

and costly. EPA does not specify a particular model to be used, meaning the selected model must be approved on a case-by-case basis. Formal new requirements for written approval by EPA's (non-statutory) Model Clearinghouse whenever a model not specified in Appendix W is used are likely to further delay the process. Accordingly, the NAAQS Implementation Coalition, of which UARG is a member, filed a petition for reconsideration of these and other aspects of the Appendix W revisions.[71]

IX. Demonstration-of-Compliance Issues

A. Outreach on Current Rulemakings

Measures used to demonstrate compliance with emission standards and other requirements, while critical to the effectiveness of a rule, also can significantly increase the rule's cost, particularly if the rule is unclear or contains errors. EPA often initiates rulemakings with the goal of fixing such problems it has identified in rules, but does so without soliciting input from stakeholders on additional ways the rule could be improved. When UARG participates in such proceedings UARG often includes in comments suggestions for other revisions it believes would make the rule more cost effective without sacrificing environmental benefits. Unfortunately, these comments often are rejected as beyond the scope of the rulemaking because they suggest changes the Agency did not propose. To avoid this problem, before engaging in such rulemakings, EPA should solicit input from stakeholders either informally or formally on ways the rule could be made more cost-effective so that the Agency can address those suggestions in its development of the proposal and/or final rule. While some of these suggestions may not by themselves warrant initiating a rulemaking, once EPA decides to initiate a rulemaking it should make a greater effort to ensure that all potential improvements can be achieved.

For example, EPA already has on its regulatory agenda plans to revise the rules governing compliance demonstrations under the Acid Rain Program, and CSAPR at 40 C.F.R. Part 75. UARG believes there are many opportunities to relieve regulatory burdens under those rules by, for example, updating fuel sampling and analysis requirements to reflect current market and operating conditions and incorporating relief already provided for individual sources by petition. EPA should engage in outreach to affected sources prior to issuing its proposal to maximize the improvements to the rule.

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[71] Petition of the NAAQS Implementation Coalition for Reconsideration of Portions of the Final Rule on Revisions to the Guideline on Air Quality Models (Mar. 20, 2017), EPA-HQ-OAR-2015-0310-0181.

B. The So-Called "Credible Evidence Rule"

In 1997, EPA promulgated revisions to 40 C.F.R. Parts 51, 52, 60, and 61 removing restrictions on the use of information other than the EPA or state-specified compliance method to establish violations of, or compliance with, emission limitations.[72] Later, EPA revised its model rules for Federal Permit Operating Programs under Title V at 40 C.F.R. Parts 70 and 71 to require identification and consideration of information other than the specified compliance method when certifying compliance with permit terms and conditions.[73] These rules, which have so far avoided judicial review,[74] impose significant regulatory burdens and uncertainty on sources regarding the standard for compliance and responsible officials' obligations when making certifications or compliance under penalty of perjury. They also are inconsistent with Congress' limited authorization to use such information when assessing civil penalties only to determine the duration of a violation that already has been established using the specified compliance method. EPA should engage in rulemaking to repeal or revise these rules to limit the methods for establishing violations and determining compliance to those specified in rules and permits, and to limit use of other information to establishing the duration of a violation or compliance, consistent with Congress' direction in CAA § 113(e).

* * * * * * * *

UARG appreciates this opportunity to provide input on EPA regulations that may be appropriate for repeal, replacement, or modification. We look forward to the future opportunities for engagement mentioned in the *Federal Register* notice. Please feel free to contact me with any questions.

Sincerely,

/s/ Andrea B. Field
Andrea Field
Counsel for the Utility Air Regulatory Group

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[72] 62 Fed. Reg. 8314 (Feb. 24, 1997).

[73] 62 Fed. Reg. 54,900, 54,946-47 (Oct. 22, 1997); 79 Fed. Reg. 43,661 (Jul. 28, 2014).

[74] Industry groups, including UARG, challenged both rules when they were promulgated, but the U.S. Court of Appeals for the D.C. Circuit refused to review their validity, finding instead that the challenges were not "ripe for review." *Clean Air Implementation Project v. EPA*, 150 F.3d 1200 (D.C. Cir. 1998); *NRDC v. EPA*, 194 F.3d 130 (D.C. Cir. 1999).

To: Rao, Raj[Rao.Raj@epa.gov]; Johnson, Yvonne W[Johnson.Yvonnew@epa.gov]
Cc: Kornylak, Vera S.[Kornylak.Vera@epa.gov]; Santiago, Juan[Santiago.Juan@epa.gov]
From: Wood, Anna
Sent: Mon 6/19/2017 8:10:42 PM
Subject: RE: BP America would like to meet on regulatory reform proposals related to the NSR Program

Yvonne will you please reach out to this gentleman and see if you can get something scheduled for Vera, Raj, me and Juan to meet with this group. Other NSR staff working on reform 2.0 are welcome to sit in if their schedule permits but I would not schedule around them. Thanks, Anna

From: Rao, Raj
Sent: Monday, June 19, 2017 2:18 PM
To: Wood, Anna <Wood.Anna@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>
Cc: Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>
Subject: FW: BP America would like to meet on regulatory reform proposals related to the NSR Program

Yvonne, please check with Anna about possible dates but I would want to avoid June 26th (Monday) – ok for the other dates.

Thanks

Raj

Raj Rao, P.E.
Group Leader, New Source Review Group,
Air Quality Policy Division,
Office of Air Quality Planning and Standards (MD-C504-03)
US Environmental Protection Agency
109 TW Alexander Drive
Research Triangle Park, NC 27709
919-541-5344
919-541-5509 - Fax

From: van Hoogstraten, David Jan Ex. 6 - Personal Privacy
Sent: Monday, June 19, 2017 1:27 PM
To: Rao, Raj <Rao.Raj@epa.gov>
Cc: Ex. 6 - Personal Privacy; Svendsgaard, Dave <Svendsgaard.Dave@epa.gov>
Subject: RE: BP America would like to meet on regulatory reform proposals related to the NSR Program

Raj:

I have recently heard back from Peter Tsirigotis with whom we also hope to have a general discussion around opportunities for regulatory reform. His office has provided us with several times and dates (June 26 from 2-4; June 27 from 1-3; July 5 from 10-11:30 and July 6 between 1 and 5). Our hope would be to meet with whomever you would assemble on the NSR issues on the same day we come down to see Peter. If possible, we would like to go down and back on the same day. Please let us know what might work.

Many thanks and best regards,

David

David J. van Hoogstraten

Senior Director, Regulatory Affairs (Environmental)

BP America Inc.

1101 New York Avenue, NW

Washington, DC 20005

Ex. 6 - Personal Privacy

From: Rao, Raj [mailto:Rao.Raj@epa.gov]
Sent: Thursday, June 15, 2017 3:37 PM
To: van Hoogstraten, David Jan
Cc: Nolan, James; Svendsgaard, Dave
Subject: Re: BP America would like to meet on regulatory reform proposals related to the NSR Program

David, thanks for your email requesting a meeting with us to talk about your NSR reform ideas. I am on travel this week. Next week, I will check in with my management and get back with you soon. We appreciate all input in streamlining the NSR program

Thanks for reaching out to us.

Raj

Sent from my iPhone

On Jun 15, 2017, at 12:46 PM, van Hoogstraten, David Jan **Ex. 6 - Personal Privacy** wrote:

> Dear Mr. Rao:
>
> At some point during the next two weeks, BP America would greatly appreciate the opportunity to come in to your office to meet with you and whomever you think appropriate about "regulatory reform" ideas we have that would involve certain changes in the NSR permitting program. This is in connection with the Executive Order entitled "Promoting Energy Independence and Economic Growth" ("E.O") signed by the President on March 28, 2017.
>
> Once we have discussed our thoughts with you and formulated them more fully, we would, after further consultation with EPA, make proposals formally to the Agency with the hope that it would pass them on to OMB/OIRA. Under the E.O., Agencies have until July 26 to submit draft energy independence reform plans to OMB and the Vice President.
>
> This morning I had a brief conversation with your colleague, Vera Komylak, during which I explained some of this and expressed our interest in coming to research Triangle Park to have a discussion. I would propose to come down together with one of our internal NSR subject matter experts and an outside consultant. Please let me know if you would like any

additional information from us.

Please let us know whether it would be possible to get together with you in person sometime during the next couple of weeks.

Many thanks and best regards,

David J. van Hoogstraten

Senior Director, Regulatory Affairs (Environmental)

BP America Inc.

1101 New York Avenue, NW

Washington, DC 20005

Ex. 6 - Personal Privacy